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No. 41

# federal register

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Friday  
March 1, 1991

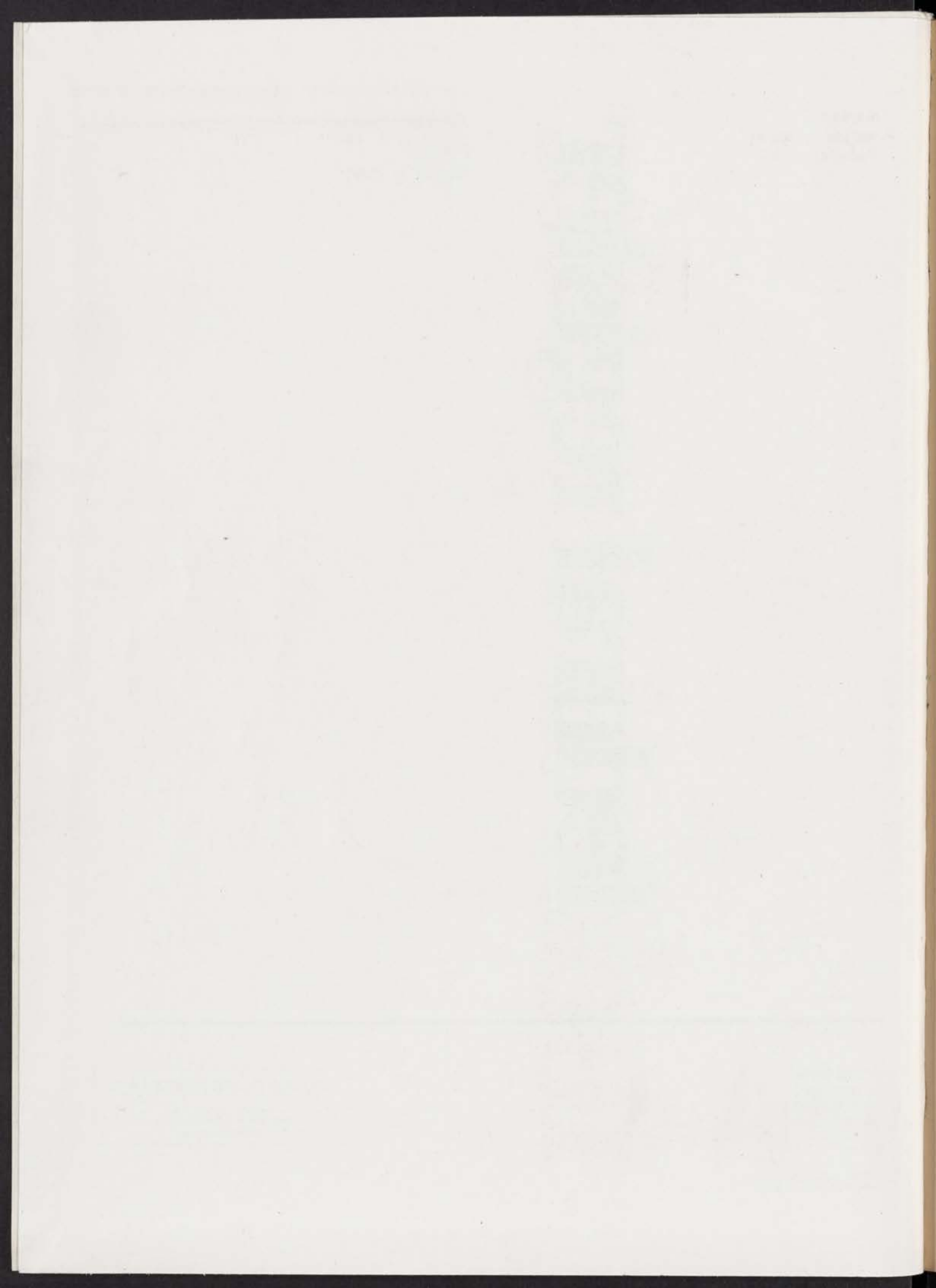
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Friday  
March 1, 1991



# Inspector General

THE INSPECTOR GENERAL OF THE DEPARTMENT OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, WASHINGTON, D.C. 20531

MEMORANDUM FOR THE ATTORNEY GENERAL

SUBJECT: [Illegible]

The Inspector General of the Department of Justice, Office of the Inspector General, WASHINGTON, D.C. 20531

MEMORANDUM FOR THE ATTORNEY GENERAL

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The President

Presidential Determination No. 91-20 of January 25, 1991

### Delegation of Presidential Authorities Under the International Narcotics Control Act of 1990

#### Memorandum for the Secretary of State [and] the Secretary of Defense

By virtue of the authority vested in me by the Constitution and the laws of the United States of America, including the provisions of the International Narcotics Control Act of 1990 (the INCA), Public Law 101-623, and 3 U.S.C. section 301, I hereby:

(1) Delegate to the Secretary of State the functions conferred upon me by the following sections of the INCA:

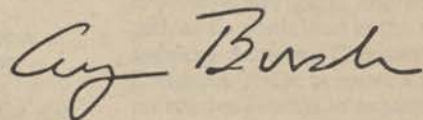
Section 4(a); section 4(e); and, in consultation with the Secretary of Defense, section 13.

(2) Delegate to the Secretary of Defense the functions conferred upon me by section 8 of the INCA.

(3) Delegate to the heads of executive departments and agencies those functions under the INCA relating to notifications to the Congress insofar as such functions relate to programs for which those heads of departments and agencies have responsibilities for notifications to the Congress under Executive Order No. 12163, as amended; provided that the heads of departments and agencies shall consult with the Secretary of State before exercising the functions delegated by this paragraph with regard to narcotics-related assistance.

The Secretary of State is authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,  
Washington, January 25, 1991.



[FR Doc. 91-5077

Filed 2-27-91; 3:51 pm]

Billing code 3195-01-M

# Presidential Documents

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Executive Order 11624, January 17, 1971

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Department of Presidential Administration  
Washington, D.C. 20503

The President

Re: Memorandum for the President, of the Secretary of State, dated January 17, 1971, and the Secretary of State's memorandum, dated January 17, 1971, and the Secretary of State's memorandum, dated January 17, 1971.

1. The Secretary of State has requested that the President sign the following executive order:

2. The Secretary of State has requested that the President sign the following executive order:

3. The Secretary of State has requested that the President sign the following executive order:

4. The Secretary of State has requested that the President sign the following executive order:

5. The Secretary of State has requested that the President sign the following executive order:

6. The Secretary of State has requested that the President sign the following executive order:

7. The Secretary of State has requested that the President sign the following executive order:

8. The Secretary of State has requested that the President sign the following executive order:

9. The Secretary of State has requested that the President sign the following executive order:

10. The Secretary of State has requested that the President sign the following executive order:

*[Handwritten signature]*

THE WHITE HOUSE  
Washington, D.C. 20503

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# Rules and Regulations

Federal Register

Vol. 56, No. 41

Friday, March 1, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 46

[Docket No. FV-91-351]

#### Increase in License Fees: Perishable Agricultural Commodities Act (PACA)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is revising the regulations (other than Rules of Practice) under the Perishable Agricultural Commodities Act (PACA) to increase license fees. The purpose of the revision is to cover increased operating costs associated with administration of the program.

**EFFECTIVE DATE:** March 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** N.E. Riddle, Assistant to the Chief, PACA Branch, room 2095-S, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, Phone (202) 475-3244.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under the USDA procedures established in the Secretary's Memorandum 1512-1 and supplemental memorandum dated March 5, 1980, to implement Executive Order 12291 and has been classified as "Non-Major" because it does not meet any of the criteria identified under the Executive Order.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of

businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Although there are numerous small entities doing business subject to the Perishable Agricultural Commodities Act, the regulation revision merely assures that the program, intended to prevent unfair trade practices in the industry, is sufficiently funded to perform its responsibilities.

The proposed action will not have an annual effect on the economy of \$100 million or more, nor will it result in a major increase in costs or prices.

#### Background

The PACA was enacted by Congress in 1930 to establish a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers, and distributors dealing in those commodities by prohibiting unfair and fraudulent practices.

The law provides for the enforcement of contracts by providing for the collection of damages from anyone who fails to meet contractual obligations. On May 7, 1984, an amendment to the PACA, Public Law 98-273, impressed a statutory trust on licensees for perishable agricultural commodities received, products derived from, and any receivables or proceeds due from the sale of the commodities for the benefit of suppliers, sellers, or agents that have not been paid.

The PACA is enforced through a licensing system. All commission merchants, dealers, and brokers engaged in business subject to the Act must be licensed. The cost of administering the Act is financed entirely through the license fees paid by those engaging in business subject to the law. The Secretary is charged with setting the license fee at a level necessary to meet the expenses of administration within the maximum provided in the law by Congress. Amendments to the Act in 1988 permitted the Secretary to assess a base annual fee of up to \$400, plus an assessment of up to \$200 for each branch operation exceeding nine. The maximum aggregate annual license fee for any firm cannot exceed \$4,000.

The administration of the trust statute has increased the workload under the program along with related travel

expenses. As a by-product of the Trust amendment, there has also been an increase in disciplinary complaint filings and investigations that require extensive in-depth personal audits. The U.S. Department of Agriculture anticipates that the workload and travel requirements will continue to increase as more growers, shippers, and distributors seek to utilize the benefits and protection of the Trust statute.

Under the current fee assessment, the program has been operating with a deficit and drawing down its trust fund reserve. Unless fees are increased, the program will deplete its trust fund reserve during Fiscal Year 1991, at which time enforcement activities will have to be curtailed.

#### Comments

On January 8, 1991, AMS published in the Federal Register (56 FR 654) a proposed revision of the regulations to increase license fees to cover operating costs associated with the program. The public was invited to submit written comments for 30 days, ending February 7, 1991. During that period, the Agency received six comments on the proposed rule. Five were from trade associations representing large numbers of PACA licensees. The sixth was from an individual firm subject to the law. All supported the fee increase. While favoring the fee increase, three of the commentors also urged the Department to seek legislation to implement the proposals contained in the recent PACA Industry Advisory Committee's report to Congress. These proposals include recommendations to expand the license fee base to certain other segments of the fruit and vegetable industry. It is contemplated that the Advisory Committee's recommendations will be subject to Congressional review.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) The requirements set forth below are substantially similar to those published as a proposed rule on January 8, 1991, (2) the availability of funding at a higher fee level is needed sooner for sound administration of the program, and (3) no useful purpose would be served by delaying the effective date until 30 days after publication.



**List of Subjects in 7 CFR Part 46**

Agricultural commodities.

Accordingly, 7 CFR part 46 is amended as set forth below:

**PART 46—[AMENDED]**

1. The authority citation for part 46 continues to read as follows:

Authority: Section 15, 46 Stat, 537; 7 U.S.C. 4990, 499c(b).

2. Section 46.6 is revised to read as follows:

**§ 46.6 License fee.**

The annual license fee is four hundred (400) dollars plus two hundred (200) dollars for each branch or additional business facility operated by the applicant exceeding nine. In no case shall the aggregate annual fees paid by any applicant exceed four thousand (4,000) dollars. The Director may require that the fee be in the form of a money order, bank draft, cashier's check, or certified check made payable to Agricultural Marketing Service. Authorized representatives of the Division may accept fees and issue receipts therefore.

Dated: February 26, 1991.

Kenneth C. Clayton,  
Acting Administrator.

[FR Doc. 91-4980 Filed 2-28-91; 8:45 am]

BILLING CODE 3410-02-M

**7 CFR Part 905**

[Docket No. FV-91-248IR]

**Oranges, Grapefruit, Tangerines, and  
Tangelos Grown in Florida;  
Redistricting of Citrus Districts and  
Reapportionment of Grower Members**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule redefines districts in the production area for Florida citrus and reapportions Citrus Administrative Committee (CAC) membership established under Marketing Order No. 905. The CAC is comprised of nine grower members apportioned among the four districts within the Florida citrus production area. This action is designed to more accurately apportion the grower members among the districts in accordance with their proportionate quantities of shipments, production, and acreage of Florida citrus.

**DATES:** This rule becomes effective March 1, 1991. Comments which are received by April 1, 1991, will be

considered prior to issuance of any final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the *Federal Register*.

**FOR FURTHER INFORMATION CONTACT:**

Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 90 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 12,000 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR

121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. A minority of these handlers and majority of the producers may be classified as small entities.

Section 905.114 (7 CFR 905.114) of the order's rules and regulations defines the four citrus districts into which the production area is currently divided. That section also outlines the apportionment of nine grower members on the CAC, each with an alternate, among those districts. Under current representation, Citrus Districts One, Two, and Three each have two grower members, while Citrus District Four has three grower members.

Section 905.14 (7 CFR 905.14) of the order authorizes the CAC, with the approval of the Secretary, to redefine the districts into which the production area is divided and reapportion or otherwise change the grower membership of the districts. The objective is to align the districts and apportion the grower membership in accordance with proportionate quantities of shipments, production, and citrus acreage in the production area in Florida.

Section 905.14 requires that the number of members from each district be based, insofar as practicable, upon the respective averages for the immediately preceding five fiscal periods of: (1) The volume of fruit shipped from each district; (2) the volume of fruit produced in each district; and, (3) the total number of acres of citrus in each district. That section also requires that the CAC consider such redistricting and reapportionment during this fiscal period (1990-91) and that it be announced on or before March 1, 1991. With a nine-member committee, each member represents about 11 percent of the acreage, production, and shipments.

The CAC recommended, based on an analysis of these factors, that one grower member position be moved from Citrus District One to Citrus District Three. In addition, the CAC recommended that the District boundaries be changed by moving Osceola County from Citrus District One to Citrus District Two. As reapportioned, Citrus District One will be represented by one member, Citrus District Two by two members, and Citrus Districts Three and Four by three members each.

The CAC reports that these changes reflect shifts in production from the northern to the southern part of the Florida citrus producing area over the past five year period. The CAC also



reports that during the five year period (1986-90), the combined average percentages used as the basis for this reapportionment and redistricting are as follows: Citrus District One, 12.0 percent; Citrus District Two, 20.9 percent; Citrus District Three, 32.5 percent; and Citrus District Four, 34.7 percent.

This action reflects the CAC's and the Department's appraisal of the need to make the changes hereinafter set forth. The Department's view is that this action will have a beneficial impact on producers and handlers since it more accurately aligns the districts and apportions the CAC membership in accordance with their proportionate quantities of shipments, production, and acreage of Florida citrus.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the CAC, and other information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because:

(1) This action provides more equitable representation on the CAC by bringing representation more in line with the citrus acreage within the districts of the production area in Florida, and the quantities of citrus produced and shipped from this area;

(2) Redistricting and reapportionment actions are to be announced by March 1, 1991 to be effective for the 1991-92 season as provided by the order; and

(3) This interim final rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

#### List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

#### PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 905.114 is revised to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

#### § 905.114 Redistricting of citrus districts and reapportionment of grower members.

Pursuant to § 905.14, the citrus districts and membership allotted each district shall be as follows:

(a) Citrus District One shall include the Counties of Hillsborough, Pinellas, Pasco, Hernando, Citrus, Sumter, Lake, Orange, Seminole, Alachua, Putnam, St. Johns, Flagler, Marion, Levy, Duval, Nassau, Baker, Union, Bradford, Columbia, Clay, Gilchrist, and Suwannee and County Commissioner's Districts One, Two, and Three of Volusia County, and that part of the Counties of Indian River and Brevard not included in Regulation Area II. This district shall have one grower member and alternate.

(b) Citrus District Two shall include the Counties of Polk and Osceola. This district shall have three grower members and alternates.

(c) Citrus District Three shall include the Counties of Manatee, Sarasota, Hardee, Highlands, Okeechobee, Glades, De Soto, Charlotte, Lee, Hendry, Collier, Monroe, Dade, Broward, and that part of the Counties of Palm Beach and Martin not included in Regulation Area II. This district shall have three grower members and alternates.

(d) Citrus District Four shall include the County of St. Lucie and that part of the Counties of Brevard, Indian River, Martin, and Palm Beach described as lying within Regulation Area II, and County Commissioner's Districts Four and Five of Volusia County. This district shall have three grower members and alternates.

Dated: February 26, 1991.

Robert C. Keeney,  
Deputy Director, Fruit and Vegetable  
Division.

[FR Doc. 91-4920 Filed 2-28-91; 8:45 am]

BILLING CODE 3410-02-M

#### DEPARTMENT OF JUSTICE

##### Immigration and Naturalization Service

#### 8 CFR Part 274

##### Drug Enforcement Administration

#### 21 CFR Part 1316

##### Office of the Attorney General

#### 28 CFR Part 8

[Order No. 1476-91]

#### Seizure and Forfeiture of Conveyances; Seizure, Forfeiture, and Disposition of Property; and FBI Forfeiture Authority for Certain Statutes; Conforming Amendments

AGENCY: Department of Justice.

ACTION: Final rule.

**SUMMARY:** The Attorney General is amending certain regulations regarding jurisdictional limits for administrative civil forfeiture in order to achieve conformity with recent changes to title 19, U.S.C., section 1607, included in Public Law 101-382, enacted August 20, 1990. The regulations are also being amended to reflect the redesignation of the Drug Enforcement Administration (DEA) Asset Forfeiture Unit as the DEA Asset Forfeiture Section and to conform the Immigration and Naturalization Service (INS) procedure for the handling of cost bonds to the procedures of the DEA and the Federal Bureau of Investigation (FBI). It is anticipated that this rule will result in more efficient handling of civil forfeiture cases to the extent that more cases will be eligible to be handled administratively.

**EFFECTIVE DATE:** March 1, 1991.

#### FOR FURTHER INFORMATION CONTACT:

David Yost, Office of Enforcement, Immigration and Naturalization Service, Department of Justice, Washington, DC 20536; telephone (202) 514-2554; William J. Snider, Forfeiture Counsel, Drug Enforcement Administration, Department of Justice, Washington, DC 20537; telephone (202) 307-8555; William R. Schroeder, Unit Chief, Legal Forfeiture, Legal Counsel Division, Federal Bureau of Investigation, Department of Justice, Washington, DC 20535; telephone (202) 393-6858.

**SUPPLEMENTARY INFORMATION:** The provisions of 8 CFR part 274, 21 CFR



part 1316 and 28 CFR part 8 refer to the jurisdictional limits for administrative civil forfeitures contained in section 1607 of title 19, U.S.C. Forfeiture procedures under the customs laws, including section 1607, are incorporated by reference in forfeiture statutes enforced and administered by the Department of Justice. On August 20, 1990, Public Law 101-382 was enacted. This law amended title 19, U.S.C., section 1607, by increasing the \$100,000 jurisdictional limit for administrative forfeiture to \$500,000, and adding monetary instruments to conveyances used to import, export, or otherwise transport or store controlled substances, as another category of administratively forfeitable property for which there is no value limitation. This final rule amends the applicable regulations governing Department of Justice procedures for civil forfeitures to achieve conformity with Public Law 101-382, to reflect the DEA's redesignation of its asset forfeiture unit as the DEA Asset Forfeiture Section, and to conform the INS procedure relating to cost bonds to the procedures used by the DEA and FBI, which direct such bonds to be forwarded to the appropriate United States Attorney for disposition in connection with judicial forfeiture proceedings.

This rule is not a major rule for the purposes of Executive Order 12291. Also, it is hereby certified that this matter will have no impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

#### List of Subjects

##### 8 CFR Part 274

Administrative practice and procedure, Aircraft, Immigration, Law enforcement, Motor carriers, Motor vehicles, Seizures and forfeitures, Vessels.

##### 21 CFR Part 1316

Administrative practice and procedure, Authority delegations (Government agencies), Drug traffic control, Research, Seizures and forfeitures.

##### 28 CFR Part 8

Administrative practice and procedure, Arms and munitions, Communications equipment, Copyright, Crime, Gambling, Infants and children, Motor vehicles, Prisons, Seizures and forfeitures, Wiretapping and electronic surveillance.

By virtue of the authority vested in me by law, including 28 U.S.C. 509, 510 and section 122 of the Customs and Trade Act of 1990, Public Law 101-382, title 8, chapter I, title 21, chapter II, and title 28, chapter I of the CFR are amended as follows:

#### Title 8

#### CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

#### PART 274—SEIZURE AND FORFEITURE OF CONVEYANCES

1. The authority citation for part 274 continues to read as follows:

Authority: 8 U.S.C. 1103, 1324(b).

##### § 274.9 [Amended]

2. In § 274.9, paragraph (a) is amended by removing "\$100,000" in the first phrase and adding in place thereof the words "the monetary amount set forth in title 19, U.S.C., section 1607".

##### § 274.10 [Amended]

3. In § 274.10, paragraph (a) is amended by removing "\$100,000" in the introductory text and adding in place thereof the words "the monetary amount set forth in title 19, U.S.C., section 1607", by removing the words "Immigration and Naturalization Service" in paragraph (a)(4) and adding in place thereof the words "Department of Justice", by removing the words "The bond will be held by the custodian." contained in the undesignated paragraph following paragraph (a)(4), and by adding to the end of paragraph (a)(4) the last two sentences in the undesignated paragraph following paragraph (a)(4).

##### § 274.11 [Amended]

4. Section 274.11 is amended by removing "\$100,000" in the first phrase and adding in place thereof the words "the monetary amount set forth in title 19, U.S.C., section 1607".

##### § 274.12 [Amended]

5. Section 274.12 is amended by removing "\$100,000" at the two places it appears therein and adding in place thereof the words "the monetary amount set forth in title 19, United States Code, Section 1607".

6. Section 274.12 is further amended by adding the words "the claim and bond, as well as" after the words "the regional commissioner shall transmit".

#### Title 21

#### CHAPTER II—DRUG ENFORCEMENT

#### ADMINISTRATION, DEPARTMENT OF JUSTICE

#### PART 1316—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

#### Subpart E—Seizure, Forfeiture, and Disposition of Property

7. The authority citation for subpart E of part 1316 continues to read as follows:

Authority: 21 U.S.C. 871(b), 881, 965, 19 U.S.C. 1606, 1607, 1608, 1610, 1613, 1618, 28 U.S.C. 509, 510.

##### § 1316.75 [Amended]

8. In § 1316.75, paragraph (a) is amended by removing "\$100,000," in the first phrase and adding in place thereof the words "the monetary amount set forth in title 19, United States Code, Section 1607; the seized merchandise is any monetary instrument within the meaning of section 5312(a)(3) of title 31 of the United States Code;"

##### §§ 1316.75, 1316.76, 1316.77, 1316.78, 1316.79, and 1316.81 [Amended]

9. In addition to the amendments set forth above, in 21 CFR part 1316, subpart E, remove the words "DEA Asset Forfeiture Unit" and add, in their place, the words "DEA Asset Forfeiture Section" in the following places:

- (a) Section 1316.75 (a) and (b);
- (b) Section 1316.76(a);
- (c) Section 1316.77(a);
- (d) Section 1316.78;
- (e) Section 1316.79(a); and
- (f) Section 1316.81.

#### Title 28

#### CHAPTER I—DEPARTMENT OF JUSTICE

#### PART 8—FBI FORFEITURE AUTHORITY FOR CERTAIN STATUTES

10. The authority citation for part 8 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510.  
11. Section 8.7 is revised to read as follows:

##### § 8.7 Judicial forfeiture.

If the appraised value exceeds the monetary amount set forth in title 19, United States Code, section 1607, or a claim and satisfactory bond have been received either for property appraised at that amount or less, or for seized merchandise which is any monetary instrument within the meaning of section 5312(a)(3) of title 31 of the United States Code, the Special Agent in



Charge of the FBI field office that seized the property shall transmit the claim and bond to the U.S. Attorney for the judicial district in which the seizure was made for the purpose of instituting judicial forfeiture proceedings. Also transmitted with the claim and bond will be a description of the property and a complete statement of the facts and circumstances leading to the seizure of the property.

#### § 8.8 [Amended]

12. The heading of § 8.8 is revised to read as follows:

#### § 8.8 Advertisement and declaration of forfeiture.

13. In § 8.8, paragraph (a) is amended by removing the words "not exceeding \$100,000 in value".

Dated: February 20, 1991.

Dick Thornburgh,  
Attorney General.

[FR Doc. 91-4723 Filed 2-28-91; 8:45 am]

BILLING CODE 4410-01-M

### FEDERAL RESERVE SYSTEM

#### 12 CFR Part 265

[Docket No. R-0726]

#### Delegation of Authority to the Federal Reserve Banks, and to the Staff Director of the Division of Banking Supervision and Regulation Together With the General Counsel of the Board, to Approve Certain Transactions

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board is amending § 265.2 of its Rules Regarding Delegation of Authority (12 CFR 265.2) in order to delegate to the Reserve Banks, and to the Staff Director of the Division of Banking Supervision and Regulation acting together with the General Counsel of the Board, authority to approve certain transactions requiring approval of the Federal Reserve pursuant to section 5(d)(3) of the Federal Deposit Insurance Act ("FDI Act") (12 U.S.C. 1815(d)(3)).

This amendment adds new paragraphs (b)(14), (c)(37) and (f)(52) to § 265.2 to effect the delegation.

**EFFECTIVE DATE:** February 28, 1991.

#### FOR FURTHER INFORMATION CONTACT:

Scott G. Alvarez, Assistant General Counsel (202/452-3583), Michael J. O'Rourke, Senior Attorney (202/452-3288), or Thomas M. Corsi, Attorney (202/452-3275), Legal Division; or Sidney M. Sussan, Assistant Director (202/452-2638) or Beverly L. Evans-Church, Supervisory Financial Analyst (202/452-

2573), Division of Banking Supervision and Regulation. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** Section 5(d) of the FDI Act, as amended by section 206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") (Pub. L. No. 101-73, section 206, 103 Stat. 183, 199 (1989)) imposes a five year moratorium on the conversion of insured depository institutions from membership in the Savings Association Insurance Fund to membership in the Bank Insurance Fund ("SAIF" and "BIF," respectively). 12 U.S.C. 1815(d)(2)(A)(ii). This section provides a limited exception to the moratorium on conversion transactions to allow the merger of a savings association owned by a bank holding company with and into a BIF-insured bank subsidiary of the same holding company.<sup>1</sup> These provisions also provide that the resulting bank must continue to pay insurance premiums to the SAIF for that portion of the deposit base of the bank attributable to the former savings association.

Section 5(d)(3) of the FDI Act requires bank holding companies seeking to engage in these transactions to obtain the prior approval of the Federal Reserve. The section provides that the Board may not approve an application by a bank holding company to engage in a transaction under these provisions unless the Board determines that certain criteria are satisfied.

The Board is now amending § 265.2 of its Rules Regarding Delegation of Authority to delegate to the Federal Reserve Banks, and to the Staff Director of the Division of Banking Supervision and Regulation acting together with the General Counsel of the Board, authority to determine that transactions occurring under these provisions conform to the criteria for Board approval set forth in section 5(d)(3) of the FDI Act.<sup>2</sup> Authority to approve merger applications in connection with such transactions would remain with the appropriate Federal banking agency for the institution resulting from the merger.

In that regard, where the appropriate Federal banking agency is the Board,

<sup>1</sup> Certain specified *de minimis* transactions, as well as failing institution transactions, also are excepted from the moratorium.

<sup>2</sup> The Staff Director and the General Counsel would have delegated authority to act on behalf of the Board in processing Oaker transactions in those cases in which a Reserve Bank concludes it should not take action.

paragraphs (c)(30) and (f)(22) of this section delegate to the Staff Director of the Division of Banking Supervision and Regulation and to the Reserve Banks, respectively, authority to approve such merger applications.

#### Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities that will be subject to the regulation.

#### Public Comment

The provisions of section 553 of title 5, United States Code, relating to notice, public participation, and deferred effective date have not been followed in connection with the adoption of this amendment because the change to be effected is procedural in nature and does not constitute a substantive rule subject to the requirements of that section. The Board's expanded rule making procedures have not been followed for the same reason.

#### List of Subjects in 12 CFR Part 265

Authority delegation (Government agencies), Banks, Banking, Federal Reserve System.

For the reasons set forth above, the Board amends 12 CFR part 265 as follows:

#### PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for part 265 continues to read as follows:

Authority: Section 11(k), 38 Stat. 261 and 80 Stat. 1314 (12 U.S.C. 248(k)).

2. The Board adds paragraphs (b)(14), (c)(37) and (f)(52) to section 265.2, to read as set forth below:

#### § 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

\* \* \*

(b) \* \* \*

(14) With the concurrence of the Staff Director of Banking Supervision and Regulation, to exercise the functions described in paragraph (f)(52) of this section in those cases in which the appropriate Federal Reserve Bank concludes that, because of unusual considerations, or for other good cause, it should not take action.

(c) \* \* \*

(37) With the concurrence of the General Counsel, to exercise the functions described in paragraph (f)(52) of this section in those cases in which the appropriate Federal Reserve Bank



concludes that, because of unusual considerations, or for other good cause, it should not take action.

(f) \*\*\*

(52) Under the provisions of section 5(d)(3)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(3)(E)), to approve requests by a bank holding company to engage in any transaction described in subparagraph (A) of section 5(d)(3) of that Act.

By order of the Board of Governors of the Federal Reserve System, February 22, 1991.

William W. Wiles,  
Secretary of the Board.

[FR Doc. 91-4832 Filed 2-28-91; 8:45 am]

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## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Part 960

[No. FHFB 91-58]

#### Affordable Housing Program

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Board ("Finance Board") is adopting final regulations governing the operation of the Affordable Housing Program ("Program" or "AHP") by the Federal Home Loan Banks ("Banks" or "District Banks"). This final rule modifies the interim regulations published by the Finance Board and effective on March 2, 1990 (55 FR 7479). The Program is authorized by section 721 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101-73, 103 Stat. 183, 423-426 ("FIRREA"), and requires the Banks to assist their members in financing affordable housing for very low-, low-, and moderate-income households. The final rule reflects public comments received in response to the request for public comment issued with the interim regulations and the experience with the Program during its first year of operation.

**EFFECTIVE DATE:** March 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Richard Tucker, Deputy Director, Housing Finance Directorate, (202) 408-2848, or Stephen D. Johnson, Attorney Advisor, Housing Finance Directorate, (202) 408-2847, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

## SUPPLEMENTARY INFORMATION:

### A. General

FIRREA added section 10(j) to the Federal Home Loan Bank Act of 1932, 12 U.S.C.A. 1430(j) ("FHLB Act"), which provides that, pursuant to regulations promulgated by the Finance Board, each Bank must establish a Program to subsidize the interest rate on advances to members of the Federal Home Loan Bank System ("Bank System") engaged in lending for long-term, very low-, low-, and moderate-income, owner-occupied and affordable rental housing.

FIRREA specifies the annual dollar contribution of each Bank to be the greater of 5 percent of the previous year's net income or a *pro rata* share of \$50 million, increasing to the greater of 10 percent of the previous year's net income or a *pro rata* share of \$100 million in 1995. Following the expressed intent of the statute, the AHP was established as a series of Programs—one for each of the twelve Banks with District-wide competitions.

### B. AHP in 1990

In 1990, the Banks committed \$80.1 million in subsidies to 383 projects from the 895 applications received. Over half of the subsidized units are for very low-income households, and 65 percent of the approved units are rental. The AHP funds are leveraged by a wide array of other public and private funds, and the AHP subsidy represents only 6.8 percent of the development cost of the projects.

### C. Comments Received

The Finance Board received a total of 95 comment letters from Federal Home Loan Bank System members (13), Federal Home Loan Banks (11), Federal Home Loan Bank Advisory Councils (9), community groups (11), nonprofit developers (19), private developers (3), trade associations (6), state and local government agencies (20), Congress (1), foundations (1), and commercial banks (1).

Comments focused on the issues of final decision making (71), application timing and processing (36), frequency of AHP offerings (39), maximum subsidy rule (41), scoring system (35), priorities (17), advisory councils (24), urban versus rural projects (20), geographic set asides (9), AHP Reserve Fund (16), and monitoring and reporting (18). In practical terms, the first four categories are slightly different aspects of the same general issue: the AHP funding process, but they are separated for analytical purposes.

#### 1. Decision Making

Three quarters of the comments submitted in response to the interim final rule addressed the issue of Finance

Board centralized decision making. The interim regulations vested final approval authority for projects recommended by the Banks with the Finance Board. Almost all of these commenters supported transferring the authority to make final decisions on applications for funding to the District Banks, opining that the Banks are best able to determine what District and local priorities should be met and to expedite funding. The comments supporting District Bank final funding decisions generally included recommendations for Finance Board monitoring and overall control. Private-sector commenters, community groups, nonprofit developers, and others were close to unanimous in opposing centralized funding decisions, but some recommended that the Finance Board retain a veto authority. While recognizing the special requirements of the AHP, many commenters urged that the Program more closely resemble other District Bank advance programs where the funding decisions are made at the Bank and the funds are made available within a matter of days.

In light of the favorable experience with the 1990 Program, the Finance Board believes that it should retain final decision making, for the reasons indicated below. The Finance Board feels that many of the concerns expressed in the comments received in March of 1990 have been addressed by the expeditious handling of the two 1990 funding rounds. All of the deadlines imposed on the Federal Home Loan Banks and the Finance Board were met without exception despite the receipt of nearly 900 applications. In addition, the Finance Board believes that changes in the application submission periods and the number of funding rounds will ameliorate most of the timing problems alleged in the comment letters. Finally, the Finance Board believes that centralized decision making ensures that the Program is administered in a consistent manner and continues to meet the national priorities established by FIRREA.

#### 2. Timing and Availability

One third of the commenters addressed the 120-day application-processing period. Most commenters said that the four-month application process established by the interim regulations reduced the effectiveness of the Program. In addition, a number of commenters stated that the timetable for the AHP application process may not correspond to the timetables of other housing programs that provide subsidized



assistance. The comments concerning the "cumbersome" and extended application process came from the full range of commenters. In the vast majority of letters, these comments were linked with the suggestion of eliminating the Finance Board role in the final funding decision.

Forty percent of the commenters said that making funds available only once or twice per year was unworkable. The commenters were concerned that this provision precludes individual Banks from adjusting the availability of AHP funds to serve particular needs of their Districts, either by offering AHP funds more frequently or by offering them on an alternate schedule.

The Finance Board agrees that coordination with other housing programs and close linking of funding cycles to project cycles are critical elements for the continued success of the AHP. The final regulations eliminate the concept of an application period. The final regulations provide that the District Bank will evaluate all pending applications as a group twice each year on two of four quarterly dates, i.e., the District Banks will have the option of choosing the two offering dates that best meet the needs of their districts. For those years after 1991, each Bank will be required to publish its offering schedule late in the preceding year. The year 1991 will be a transition year with three available application deadline dates: April 15, July 15, and October 15. After 1991, the uniform dates will be January 15, April 15, July 15, and October 15. If one of these dates falls on a holiday or weekend, the deadline date will be the next working day. The final regulations also shorten the period for District Bank review to 30 days. These changes will result in a shortening of the current four-month process to two months.

### 3. Maximum Subsidy

FIRREA requires the Finance Board to set a limitation on the subsidy to any one project. The interim regulations limited the subsidy on any single project to that amount necessary to reduce the target household's housing expenses to not less than 28 percent of gross monthly income. This issue is important because it serves as the primary basis for qualification in the Program.

In drafting the interim regulations, 28 percent was selected, because it is a widely accepted "front ratio" in the mortgage qualification process. Many of the households targeted by the Program currently spend in excess of half their income on housing. Therefore, 28 percent was considered a significant reduction in housing expenditures, while still representing a fair and substantial

portion of income being spent for housing.

Over forty percent of the commenters, especially the nonprofit developers and community organizations, called for a change in the maximum subsidy rule. Many commenters said this requirement was too rigid and would hamper the Program's effectiveness in serving the needs of very low-income households. Several community organizations recommended that the Finance Board delete the 28-percent requirement for rental projects. They also recommended that the requirement be waived in situations where this requirement would conflict with the requirements of other government-sponsored housing programs. A few commenters recommended denominating the maximum allowable subsidy in terms of an interest-rate reduction, but the majority of commenters urged a lower (or no) requirement.

The Finance Board has adopted the suggestion of many commenters to lower the proportion of gross monthly income that must be spent on housing to 20 percent. Additionally, since many of the first-round applications were for direct subsidies rather than subsidized advances, an income limitation rather than an interest-rate limitation continues to make the most sense.

Due to the limited amount of subsidy available, the success of the Program depends in great measure on its ability to combine with other sources of funding including other subsidized funds. In section 102 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101-235 ("HUD Reform Act"), Congress addressed the potential for abuse in the layering of HUD subsidies if this practice of combining subsidies is not monitored and controlled. Under the HUD reform Act, the Secretary of HUD is required to certify that the amount of HUD assistance provided to certain activities does not exceed the amount necessary to make the activity feasible. HUD is developing rules and procedures to implement those legislative requirements.

The Finance Board is equally concerned that AHP subsidies only be used for critical housing finance needs and that the Program not be abused. The Finance Board believes that the design of the Program, the fact that subsidies are provided through independently regulated financial institutions, the Program's detailed monitoring and reporting requirements, effective provisions for recapture of subsidy funds in the event of non-compliance, an emphasis on community-based nonprofit organizations as project sponsors, and

the small dollar size of the Program should serve to prevent such abuses. The Finance Board will continue to carefully monitor the Program with this important policy goal in mind. The Finance Board intends to utilize HUD's experience and expertise in the development and implementation of rules and procedures designed to prevent excessive subsidy layering, and will create additional safeguards in the form of a subsidy layering model specifically designed for the nature of the AHP program, as necessary.

### 4. Priorities and Scoring System

The interim regulations stated seven AHP priorities of which three were required to be met in order to be considered for AHP funding:

(1) Projects that finance the purchase, construction, and/or rehabilitation of owner-occupied homes for very low-, low-, and moderate-income households in that priority order; or

(2) Projects that finance the purchase, construction, and/or rehabilitation of rental housing, at least 20 percent of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term; or

(3) Projects that finance the purchase and/or rehabilitation of housing owned or held by the United States Government or any agency or instrumentality of the United States including those held by the U.S. Department of Housing and Urban Development, the Resolution Trust Corporation, Farmers Home Administration, Veterans Administration, Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation; or

(4) Projects that finance the purchase, construction, and/or rehabilitation of housing, which is sponsored by any nonprofit organization, any state or political subdivision of any state, any local housing authority, or state housing agency; or

(5) Projects that empower the poor through resident management, urban homesteading and similar programs; or

(6) Projects that promote fair housing; or

(7) Projects that provide permanent housing for the homeless.

Almost two-fifths of the commenters addressed the priorities and the scoring system. Several commenters alleged that projects with both owner and rental units were given an unfair advantage, because they automatically met two priorities.

While the interim regulations encouraged the District Banks to be



"innovative" in project financing, the priority weighting given to projects addressing multiple national priorities could preclude viable projects that better respond to a particular District's needs. For example, numerous commenters and the District Banks stated that the interim scoring system places rural projects at a competitive disadvantage to urban projects, because applications for projects in rural areas are more likely to be from smaller institutions, and less likely to have nonprofit sponsors, urban homesteading, or large inventories of government-owned properties.

The scoring scheme in the interim regulations may also have an implicit bias in favor of rental housing. First, the scoring scheme awarded points for income targeting, and very low-income households are more likely to rent than they are to own. Second, nonprofit involvement, also awarded points, is more common with rental housing than it is with owner-occupied housing. Third, rental housing is likely to score well on effectiveness, because multifamily rental housing is typically less expensive to build and uses less land than detached houses.

The final regulations make several substantive and technical changes to the priorities and scoring system to address these concerns.

#### 5. District Bank Advisory Councils

A quarter of the comment letters addressed the limited role of the Advisory Councils in the interim regulations. They argued that since the interim regulations placed the responsibility for final project approval with the Finance Board, the Advisory Councils were ignored and their only remaining role was one of an annual report writer. The commenters said that these provisions are contrary to the intent of FIRREA.

The final regulations create a District Bank priority developed by the Advisory Council on an annual basis, adopted by the Bank's Board of Directors, and approved by the Finance Board. This will enhance the role of the Councils in making the Program more responsive to local housing finance needs.

#### D. Analysis of the Final Regulations

##### 1. Establishment of the Program

The board of directors of each Federal Home Loan Bank must adopt an implementing plan for the Program established by FIRREA and these regulations. The final regulations require the Banks to submit their plan to the Finance Board annually. This plan must include the Bank's overall strategy for

the Program and the staffing, monitoring, education, and promotion planned for the Program. The plan must also address the technical issues of (1) controlling arbitrage associated with AHP funds, and (2) dealing with the relationship between interest-rate changes and subsidy calculations.

Under the Program, it is the responsibility of the Banks and their members to meet the civil rights requirements of the Fair Housing Act, 42 U.S.C. 3601-19, and other applicable civil rights laws and regulations. The Fair Housing Act prohibits discrimination in the sale, rental, or financing of housing based on race, color, religion, sex, national origin, handicap, and familial status; and prohibits discrimination in residential real estate-related transactions, which include the making or purchasing of loans or providing other financial assistance, and the selling, brokering, or appraising of residential real property.

Further, section 808(d) of the Fair Housing Act requires that federal agencies that administer housing programs do so in a manner that affirmatively furthers the goal of fair housing. To meet that objective, AHP applicants should carry out their advertising activities so as to assure that potential buyers or tenants from all racial and ethnic groups in the housing market area know about the availability of the housing. Special emphasis should be given to persons and/or organizations who might not otherwise learn about the availability of the housing without such outreach efforts, particularly members of minority groups and protected classes. Advertising and media selected for such groups should be oriented to the targeted audience. Special emphasis should be placed on minority newspapers, minority-oriented radio and television stations, and other organizations, such as fair housing groups and community groups, with significant contact with the targeted groups.

Accordingly, the final regulations raise the goal of fair housing from one of seven priorities to an absolute threshold that must be met by all applicants.

##### 2. Use of Subsidized Advances and Direct Subsidies

As provided by FIRREA, the final regulations require the Banks to subsidize the interest rates on advances to members engaged in lending for long-term, low- and moderate-income, owner-occupied and rental housing. Additionally, since the Finance Board believes the Banks should maximize the resources provided under the Program through the innovative use of Program

subsidies, the final regulations continue to permit the use of direct subsidies and other types of subsidized assistance.

The final regulations define the term "subsidy" as the direct cash payments under the Program or the net present value of the foregone interest revenues to the Bank resulting from making funds available under the Program at rates below the cost of funds. This funding mechanism is in accordance with generally accepted accounting principles. Calculation of the subsidy commitment in present-value terms ensures that adequate funding will be available in future years.

The Finance Board expects that, with the exception of interest rates, the terms and conditions of the advances offered by the Banks to members as part of the Program will conform to the Banks' standard collateral requirements and tests of creditworthiness. The Finance Board also expects that the members, in making loans under the Program, will apply prudent underwriting standards. Members are required to maintain safe and sound lending practices consistent with the requirements of their primary regulator to ensure that Program loans are within acceptable risk levels.

The final regulations prescribe two broad purposes for AHP subsidies: (1) To finance the purchase, construction, and/or rehabilitation of owner-occupied housing for very low-, low-, and moderate-income households; and (2) to finance the purchase, construction, and/or rehabilitation of rental housing, at least 20 percent of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term.

The Finance Board recognizes that counseling and related community services can play a vital role in the development and success of affordable housing programs. However, given the limited amount of AHP subsidy available and the clear Congressional mandate to use these funds to provide programs to finance housing, the Finance Board believes that AHP funds should not be used to pay or defray indirect or third party costs not standard for housing finance transactions. The Finance Board believes this policy best reflects Congressional intent in establishing the AHP and maximizes the use of AHP resources.

While the Finance Board encourages financing arrangements that may be used for leveraging the funds to be allocated under the Program, it realizes that some of these innovative concepts and financing arrangements may not be familiar to some members. Because of



the Finance Board's concern for safety and soundness and prudent lending, institutions not familiar with these financing techniques are encouraged to consider participating in such efforts with experienced lenders. The final regulations continue to require that members "maintain safe and sound lending practices, consistent with the requirements of their primary regulator, and designed to return a profit."

### 3. Application for Funding

AHP funds will be made available in two offerings each year on quarterly dates selected by each Bank. Each Bank is to notify its members of the amount of annual Program funds available for the District, the date of fund rounds, and the approximate amount to be offered each funding period. Applications must be received by the Banks by the 15th day of the quarter (January, April, July, October) in which funds are available. For 1991, however, because of the late publication of these final regulations, only three offering dates will be made available. Applications for 1991 AHP funding must be received by April 15th, July 15th, and October 15th depending on the two dates selected by the Banks.

The Banks will evaluate and score eligible applications. Those applications receiving the highest ratings will be forwarded by the Bank to the Finance Board not later than 30 days after the application deadline. The Finance Board will announce final funding decisions within 30 days thereafter.

To ensure that Program subsidies are allocated for the priority uses intended and the specific households targeted, the final regulations require that a member's application for a subsidized advance, direct subsidy, or other assistance include a description of the project and its conformity with Program objectives. The application must also include: A description of the feasibility of the project, including local market conditions; a statement of its compliance with fair housing laws; the qualifications and role of the sponsor; the subsidy requested; a disclosure of any applicant's interest in the property or project; and certifications that the project will not receive a subsidy in excess of that allowed by the FHLB Act or the regulations and that the subsidy will only be used for authorized purposes. The application must also include a description of the long-term monitoring techniques that will be used by the member to ensure the appropriate use of Program funds and the recapture provisions for any unused or improperly used subsidy.

### 4. Project Scoring and Funding

The Program will operate through a nationally administered series of District-wide competitions. Each Bank will evaluate applications on the basis of a number of criteria or objectives that are included in the final regulations. These objectives reflect the broad goals of reaching the targeted households, providing maximum assistance per subsidy dollar, and encouraging innovation, community involvement, and community stability.

The final regulations have four threshold tests—two of which are new. The new tests that all projects must meet are compliance with fair housing laws and the ability of the project to begin using Bank assistance within twelve months of approval. The other two threshold tests are project feasibility and creditworthiness of the member. Only projects that meet all four threshold tests are eligible for further consideration.

**Priorities.** Projects satisfying all four threshold tests and meeting at least three of the following objectives shall have priority for funding:

(1) Projects the principal purpose of which is to finance the purchase, construction, and/or rehabilitation of owner-occupied housing for very low-, low-, and moderate-income households in that priority order; or

(2) Projects the principal purpose of which is to finance the purchase, construction, and/or rehabilitation of rental housing, at least twenty percent (20%) of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term; or

(3) Projects that finance the purchase and/or rehabilitation of housing owned or held by the United States Government or any agency or instrumentality of the United States, for example, Department of Housing and Urban Development, Resolution Trust Corporation, Farmers Home Administration, Veterans Administration, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation; or

(4) Projects that finance the purchase, construction, and/or rehabilitation of housing, which is sponsored by any nonprofit organization, a state or political subdivision of any state, a local housing authority, or a state housing agency; or

(5) Projects that empower the urban or rural poor through resident management, homesteading, self-help housing, or similar programs that meet critical urban or rural housing needs; or

(6) Projects that provide permanent housing for the homeless; or

(7) Projects that meet a Bank objective recommended by the Bank's Advisory Council, adopted by the Bank's board of directors, and approved by the Finance Board.

The final regulations make a minor change in the first two priorities by adding language about the "principal purpose" of the project. This change corrects an unintended feature of the interim regulations that allowed projects with both owner-occupied and rental units to automatically meet two priorities. The final regulations also raise fair housing from a priority to a threshold test, and include a new District Bank priority.

Each Bank will first separate the submitted projects into two groups: (1) Those that meet at least three of the priorities identified in the final regulations, and (2) those that meet fewer than three of the priorities. Projects in the first group will be rated before projects in the second group. Second-group projects will only be rated and forwarded to the Finance Board if there are insufficient applications in the first group. Projects not forwarded to the Finance Board should be considered for assistance under the Community Investment Program or other programs.

To ensure that the projects funded conform to Program objectives, the Banks will evaluate all projects using the 100-point scoring system described in the final regulations. The Banks will rank order the applications within each of the groups identified above based on the sum of the point totals for the applications.

The scoring system divides the Program objectives into three groups. The total possible score a project may receive is 100 points. The first, and most important, objective is the consistency of the project with the priorities identified in the final regulations. Projects may receive up to 25 points for this objective, with a project's actual point total reflecting its consistency with, or potential for achievement of, the priorities.

The second group of objectives includes: (1) The extent to which the project targets households below the statutory maximums, especially very low-income households; (2) the potential for long-term retention of owner-occupied and rental housing affordable for very low-, low-, and moderate-income households; and (3) the effective use of Program dollars, i.e., the amount of AHP subsidy per unit and the extent to which the project is able to draw upon other sources of funds and



programs designed to benefit targeted households. The Bank may award each project up to 15 points per objective in this group.

The third group of objectives includes: (1) The extent to which the project actively involves nonprofit or community organizations, other than application sponsors; (2) the extent to which the project maximizes community stability and minimizes the displacement of very low-, low-, and moderate-income households; and (3) the use of innovative and experimental nonfinancial and financial approaches toward providing affordable housing for very low-, low-, and moderate-income households. The Bank may award a project up to 10 points for each objective in this group.

After the Bank has evaluated applications from members, the Bank will forward to the Finance Board for final funding consideration those applications receiving the highest overall rankings. To ensure an adequate pool of projects for Finance Board consideration, the final regulations require each Bank to forward to the Finance Board applications from the highest ranking projects sufficient to exhaust the funds being made available by the Bank for that funding round plus the next four highest-ranking projects. The final regulations provide, however, that if in the Finance Board's opinion there is an insufficient number of applications from any Bank, it may request that the Bank submit additional eligible applications to the Finance Board for review.

The final regulations also require the Bank to submit a summary of each project forwarded to the Finance Board. The summary shall include a brief description of the project, the amount of subsidy recommended by the Bank, a description of how the member and Bank will monitor the project, a description of the provisions for recapture of the subsidy, and the reason for the points awarded for each of the enumerated objectives.

The Finance Board will review the applications submitted by each Bank to ensure national consistency with the Program's stated priorities, objectives, and regulations. Based on this review and the rankings submitted by the Banks, the Finance Board will make final funding decisions.

#### 5. Reporting

Members that receive Program subsidies will be required to file periodic reports with the Bank until the subsidy has been fully used or repaid by the member. The reports shall, at a minimum, describe the manner in which

the member has used the proceeds of the subsidy and contain a certification that the subsidy has been passed through to the borrower by the member and continues to be used for the approved purposes.

#### 6. Monitoring

A variety of safeguards have been built into the Program to monitor project performance and ensure adherence to Program regulations and guidelines. These monitoring elements are designed to prevent Program misuse and ineffective use of Program funds.

Active monitoring by the member and its board of directors is required. The member must include in each AHP application an explanation of how the member intends to monitor the use of any subsidy or other assistance provided by the Bank, including copies of any agreements entered into for this purpose. Each Bank must monitor, audit, and review its Program and member Program projects to ensure full compliance.

At a minimum, the Banks shall audit the following Program elements: Subsidy calculations, pricing, development, promotion, marketing, and compliance. In addition, member project development, subsidy delivery, loan pricing (including mark-up, fees, and terms), community involvement, and oversight will be monitored. The Finance Board has the responsibility and authority to monitor, audit, and review Bank and member compliance using all the resources at its disposal. Techniques for monitoring by the Banks and Finance Board may include audits of applications and supporting documentation, loan-record analysis, specialized reporting and data gathering, and site inspections.

Monitoring AHP advances and assistance for single-family homeownership will in all instances require compliance with a one-time initial income eligibility requirement to ensure that only the targeted households are the recipients of the subsidies. In certain cases, such as community land trusts and limited-equity housing cooperatives, where long-term retention of income eligibility requirements and use restrictions are present, longer-term monitoring will be necessary, particularly at the time of sale or transfer of the housing unit.

Monitoring multifamily rental projects will require long-term tracking (both of use and income levels) to ensure that Program subsidy benefits remain available to very low-, low-, and moderate-income households. Most local, state, and federally funded housing programs are targeted to very

low-, low-, and moderate-income households, and income eligibility is set and maintained for a designated period. Where Program subsidies are used in tandem with such programs, the income level recertification process required by the other program (usually annual) will normally satisfy the income eligibility monitoring requirements of the Program. Where other local, state, and federal officials perform field visits, loan and lease reviews, and other inspections, additional information will be available to assist the Finance Board and the Banks in these monitoring efforts.

#### 7. Recapture

If at any time the proceeds of a subsidized advance will not be or cease to be used for authorized uses and eligible projects, the member who received such an advance must immediately notify the Bank that granted the advance. The member must immediately cease to provide additional subsidized funds to the project. Upon receipt of such notice, the Bank shall recover the unused or improperly used portion of the subsidized advance, and in doing so, may exercise a number of options, including: Repricing the advance to the interest rate applicable at the time the advance was made on non-subsidized advances of comparable type and maturity; requiring the member to reimburse the Bank for the amount of the unused or improperly used subsidy on the advance; assessing a prepayment fee; or calling such advance. Under all circumstances, any subsidy committed but no longer used for an eligible project will become available to the Bank for future projects.

To prevent potential windfall profits on the premature sale of rental housing that has been subsidized using AHP funds, members must agree to either provide the Banks with evidence that the sales contract includes a provision that the rental housing will continue to be used for its original purpose, or to reimburse the Bank an amount equal to the *pro rata* subsidy value considered to have been realized by the seller as profit, based upon the amount of the subsidy and the remaining term of the project as originally proposed.

#### 8. Maximum Subsidy

The final regulations set the maximum subsidized assistance at the amount needed to reduce the monthly housing cost (excluding utilities) for households in the targeted income group to 20 percent of gross monthly income. In situations where other forms of subsidized assistance are being used with the AHP, particular care should be



taken to ensure that the total amount of subsidies provided does not exceed this amount.

If the subsidized assistance is in the form of an advance, the final regulations also specify that the loan to the borrower shall be subsidized at least to the same extent as the advance is subsidized; the borrower must receive the full benefit of the subsidy.

The Finance Board does not expect 20 percent to become the norm for all AHP projects. Indeed, this maximum subsidy should be reserved for selected very low-income units. Deeper subsidies, as represented by lower proportions of a household's income spent on housing, will increase the AHP subsidy per unit, reduce the effectiveness of the subsidy, and potentially result in fewer units.

The maximum subsidy rule applies only to (1) the initial purchase of an owner-occupied unit, (2) the initial financing of a rental project, and (3) a rental project as units become vacant and are re-rented. In this third case, the practical application means that vacant units must be rented to households of the income levels specified in these regulations so that the income limitation for the targeted unit continues to be met.

#### 9. Contributions to Program

The final regulations set forth the funding requirements for the Program. As provided in FIRREA, the Banks are required to contribute a percentage of their preceding year's net income to the Program. Beginning in 1990, this amount was five percent of the preceding year's net income, increasing to six percent in 1994, and to 10 percent annually in years thereafter. The final regulations also set forth minimum annual total amounts that must be contributed by the Bank System as a whole, as required in FIRREA. From 1990 through 1993, at least \$50 million must be contributed annually to the Program by the Banks. This amount will increase to \$75 million in 1994, and to \$100 million annually thereafter.

To the extent that the percentage of income-based annual contributions of the Banks does not meet these minima, additional contributions shall be made *pro rata* by each Bank based on its previous year's net income such that the minimum dollar requirement shall be met. Each Bank's *pro rata* share of such additional contributions will be determined by dividing the Bank's net income for the relevant period by the total Bank System net income for the same period and then multiplying the percentage derived by the amount of the Bank System shortfall.

The regulations provide that, for purposes of calculating the annual

amount of contributions, the Banks' annual net income is reduced by the contribution to the Resolution Funding Corporation.

#### 10. Temporary Suspension of Contributions

Consistent with section 721 of FIRREA, the Finance Board is providing a procedure for the temporary suspension of contributions in extraordinary circumstances. If a Bank believes that a temporary suspension is appropriate, the Bank must immediately notify the Finance Board and make written application for relief. The application should be accompanied by the Bank's preceding year's annual report and its most recent quarterly and monthly financial statements. Banks that apply for a temporary suspension may also submit additional information not provided for in these regulations to support their case for suspension.

The final regulations specify factors the Finance Board will consider in determining whether to approve an application for temporary suspension, including, any decline in the Bank's quarterly or annual net income, paid-in membership capital, and level of advances, and projections for these trends to continue. The Finance Board will also consider other financial conditions that may contribute to the Bank's financial instability and financial data the Bank submits in support of its application.

The Finance Board will disapprove a temporary suspension application if the Bank's financial instability results from a change in the terms of advances (other than subsidized advances) not justified by market conditions, inordinate operating and administrative expenses, nonstandard banking practices or mismanagement, or if for any other reason a temporary suspension is not warranted.

The Finance Board will act on written applications for temporary suspension within 30 days of receipt, but the temporary suspension shall not take effect until the time period expires for a joint resolution of Congress disapproving the temporary suspension. The Finance Board decisions shall be accompanied by specific findings and reasons for the action.

All temporary suspensions will be granted for a specified time period. The Committee on Banking, Finance and Urban Affairs of the U.S. House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate and each Bank shall receive written notice of any temporary suspension.

During a temporary suspension, the subject Bank shall provide the Finance Board with any and all financial reports the Finance Board may require. The Finance Board may determine at any time during the suspension that the Bank has returned to a position of financial stability, and the Finance Board may terminate the temporary suspension upon written notice to the Bank. A Bank may apply in writing for an extension of a temporary suspension, and the Finance Board shall act on the request within 30 days of receipt. The Finance Board will determine the effective date, issue written notice, and notify Congress and the Banks of extensions in a fashion similar to that for original temporary suspensions.

The Finance Board will send notice of suspensions to the Committees at least 60 days prior to the effective date of a suspension, and at least 30 days prior to the effective date of an extension. The temporary suspensions granted by the Finance Board will become effective on their prescribed dates, unless a joint resolution of Congress disapproving the temporary suspension is enacted prior to the effective date.

#### 11. Reserve Fund

If a Bank fails to use or commit the amount it is required to contribute to the Program in a given year, 90 percent of the unused or uncommitted amount in that year shall be paid over to the Affordable Housing Reserve Fund at the end of the year. The 10 percent of the unused or uncommitted amount retained by the Bank should be fully used or committed by that Bank during the following year, and any remaining portion must be deposited in the Reserve Fund.

The Reserve Fund will be administered by the Finance Board. Any Bank may apply to the Finance Board to use any available Reserve Funds, but only after all of its current annual allocation to the Program has been used or committed.

#### 12. Coordination

The final regulations require the Finance Board and the Banks to coordinate Program activities, to the maximum extent possible, with other government agencies and with appropriate nonprofit organizations involved in affordable housing activities.

#### 13. Advisory Councils

FIRREA requires the establishment of Program Advisory Councils by each Bank pursuant to regulations promulgated by the Finance Board. In



recognition of the economic and geographic differences among the Bank Districts, the Finance Board provides in these final regulations that each Bank has the discretion to determine the size and member composition of its Advisory Council. Each Bank shall give consideration to the size and diversity of its District and the very low-, low-, and moderate-income housing needs of its District. The final regulations provide that the composition of each Bank's Advisory Council must reflect the very low-, low-, and moderate-income housing activities and needs within the District, as well as the full range of the community and nonprofit organizations concerns.

FIRREA provides flexibility in the selection of Council members in each District. At the same time, experience and commitment to providing and/or promoting very low-, low-, and moderate-income housing should be the most important factors in choosing members. The Finance Board recognizes that state and local housing agencies represent a significant resource, based on their extensive experience in affordable housing, that may be included in the Advisory Councils. However, in an effort to encourage broad representation, state and local agency officials should not constitute an undue proportion of the Council membership.

The nomination and selection process in the final regulations is aimed at encouraging broad local participation in the process. Each Bank shall actively solicit nominations from as many community and nonprofit organizations as can be identified. In order to defray the expense of participating in the Advisory Councils, members will be compensated by the Banks for travel expenses and paid a subsistence allowance.

The final regulations require that Council members serve staggered two-year terms. In so directing, the Finance Board seeks to provide continuity in experience and service to the Advisory Council, as well as to provide frequent opportunities for new groups and individuals to serve on the Councils.

Each Council shall designate one of its members or a member of the Bank's staff to act as Secretary of the Advisory Council. The Secretary shall record and maintain minutes of the meetings of the Council. Minutes of each meeting shall contain, among other things, a record of the persons present, a description of the matters discussed, and recommendations made. The Secretary's reports will be the initial basis for the annual Council reports to each Bank and the Finance Board.

The final regulations require that each Bank submit annually to the Finance Board, for review and approval, a detailed plan for the operation of its Advisory Council. The final regulations also require each Advisory Council to submit to the Finance Board an annual report analyzing the low-income housing activity of the Bank.

#### E. Regulatory Flexibility Act

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Finance Board is providing the following regulatory flexibility analysis.

##### 1. Need for and Objectives of the Rules

As explained in the **SUPPLEMENTARY INFORMATION**, these Finance Board regulations are mandatory under FIRREA.

##### 2. Issues Raised by Commenters and Agency Assessment and Response

These issues are discussed in the **SUPPLEMENTARY INFORMATION**.

##### 3. Significant Alternatives Minimizing Small-Entity Impact and Response

No new requirements are being added by the amendments. These are no alternatives that would be less burdensome in meeting the objectives discussed in the **SUPPLEMENTARY INFORMATION**.

#### List of Subjects in 12 CFR Part 960

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby amends chapter IX, title 12, Code of Federal Regulations, by revising subchapter E, consisting of part 960, to read as follows:

#### Subchapter E—Affordable Housing

#### PART 960—AFFORDABLE HOUSING PROGRAM

- Sec. 960.1 Definitions.
- 960.2 Establishment of program.
- 960.3 Use of subsidized advances and direct subsidies.
- 960.4 Applications for funding.
- 960.5 Project scoring and funding.
- 960.6 Reporting requirements.
- 960.7 Monitoring.
- 960.8 Recapture.
- 960.9 Maximum subsidy.
- 960.10 Annual contributions.
- 960.11 Temporary suspension of contributions.
- 960.12 Affordable Housing Reserve Fund.
- 960.13 Coordination.
- 960.14 Advisory Councils.

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 10, 47 Stat. 731, as amended (12 U.S.C. 1430); sec. 21B, as

added by sec. 511, 103 Stat. 394 (12 U.S.C. 1441b).

#### § 960.1 Definitions.

(a) *Advances* means extensions of credit by Banks to members under the provisions of 12 CFR part 935 and this part 960.

(b) *Affordable for very-low income households* means the monthly housing expense charged to tenants for rental units made available for occupancy by very low-income households shall not exceed 30 percent of the income of a very low-income household, adjusted for family size.

(c) *Area* means a metropolitan statistical area, a county, or a nonmetropolitan area, as established by the U.S. Office of Management and Budget.

(d) *Bank(s)* means a Federal Home Loan Bank established under the authority of the Federal Home Loan Bank Act.

(e) *Board* means the Federal Housing Finance Board or an official duly authorized to act on its behalf.

(f) *Cost of funds* means the estimated cost of issuing Bank System consolidated obligations with maturities comparable to those of the subsidized advances, as published from time to time by the Federal Home Loan Bank System's Office of Finance.

(g) *Low- and moderate-income households* means households for which the aggregate income is 80 percent or less of the area median income.

(h) *Median income* means the median family income for an area as determined and published by the U.S. Department of Housing and Urban Development.

(i) *Member* means an institution admitted to membership in a Federal Home Loan Bank.

(j) *Net earnings of a Bank* means the net earnings of a Bank for a calendar year after deducting the Bank's *pro rata* share of the annual contribution to The Resolution Funding Corporation.

(k) *Program* means the Affordable Housing Program established by this part.

(l) *Rural* means any open country, or any place, town, village, or city which is not part of or associated with an urban area and which has a population not in excess of 2,500 inhabitants, or has a population in excess of 2,500 but not in excess of 10,000 if it is rural in character, or has a population in excess of 10,000 but not in excess of 20,000 and is not contained within a standard metropolitan statistical area, and has a serious lack of mortgage credit for lower and moderate-income families, as determined by the Secretary of



Agriculture and the Secretary of Housing and Urban Development. Any area classified as rural prior to October 1, 1990, and determined not to be rural as a result of data received from or after the 1990 decennial census shall continue to be so classified until the receipt of data from the decennial census in the year 2000, if such area has a population in excess of 20,000 but not in excess of 25,000 is rural in character, and has a serious lack of mortgage credit for lower and moderate-income families.

(m) *Sponsor* means a nonprofit or for-profit organization or public entity that is integrally involved in a project, such as exercising control over the planning, development, and/or management of a project.

(n) *Subsidy* means the direct cash payments under the Program or the net present-value of the foregone interest revenues to the Bank from making funds available under the Program at rates below the cost of funds.

(o) *Very low-income households* means households for which the aggregate income is fifty percent (50%) or less of the area median income.

#### § 960.2 Establishment of program.

(a) It is the policy of the Board and the Banks to promote decent and safe affordable housing and to address critical affordable housing needs through the use of subsidized advances, direct subsidies, and other assistance to members.

(b) Each Bank's board of directors shall adopt an annual implementation plan consistent with Federal Home Loan Bank Act, 12 U.S.C.A. 1430(j) ("the Act"), and this part to provide subsidized advances, direct subsidies, or other assistance to members engaged in long-term lending that provides owner-occupied and rental housing affordable to very low-, low-, and moderate-income households. A copy of the Bank's plan shall be submitted to the Board annually.

(c) The Program will be carried out in accordance with the requirements of the Fair Housing Act, 42 U.S.C. 3601-19, and other applicable civil rights laws and regulations.

#### § 960.3 Use of subsidized advances and direct subsidies.

(a) *General.* (1) Funds under each Bank's Program shall be used to provide subsidized assistance to members engaged in lending for activities eligible to receive subsidized assistance pursuant to the provisions of section 10(j) of the Act and this part. Subsidized advances made under the Program shall be consistent with the provisions of the Act and the regulations applicable to

advances in general contained in 12 CFR part 935, except to the extent modified by this part. Direct subsidies and other assistance provided to members shall comply with the provisions of this part.

(2) In making extensions of credit under the Program, members shall use prudent, flexible, and innovative underwriting standards. Members shall maintain safe and sound lending practices, consistent with the requirements of their primary regulator, and designed to return a profit, but members will be encouraged and assisted in funding qualified projects that do not meet customary underwriting criteria or existing secondary mortgage market requirements or for which no secondary market exists. The Board and the Banks shall encourage and assist the development of new secondary markets for projects funded by the Program.

(b) *Authorized uses.* All members receiving subsidized advances, direct subsidies, and other assistance from a Bank shall use the proceeds of such subsidies and the benefits of such assistance to:

(1) Finance the purchase, construction, and/or rehabilitation of owner-occupied housing for very low-, low-, and moderate-income households; or

(2) Finance the purchase, construction, and/or rehabilitation of rental housing, at least twenty percent (20%) of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term.

(c) Program funds may only be used for direct costs required to produce and/or finance affordable housing units.

(d) Each Bank shall ensure that the preponderance of assistance provided by the Bank is ultimately received by very low-, low-, and moderate-income households.

#### § 960.4 Applications for funding.

(a) The Program is based on District-wide competitions administered by the Board. Banks may accept applications for funding during two of four quarterly application periods each year, as announced by the Banks no later than December 1 of the preceding year. Applications must be received by the 15th day of each quarter (January, April, July, October), or the next subsequent business day if the 15th falls on a weekend or holiday. For 1991, Banks may accept applications for funding on two of three dates, which dates are April 15th, July 15th, and October 15th.

(b) Each Bank shall notify its members of the approximate amount of annual program funds available for the District, and the approximate amount to be

offered in each funding period. The amount of funds made available in each offering should be comparable.

(c) Each member shall include in its application for a subsidized advance, direct subsidy, or other assistance:

(1) A concise description of the purpose for the request, its relationship to the Program's priorities identified in § 960.5(b), and its consistency with the criteria identified in §§ 960.5(c), 960.5(d) and 960.5(e);

(2) A statement of how the project complies with fair housing laws and regulations;

(3) A description of the feasibility of the project, including the local market conditions justifying the project;

(4) The qualifications and role of the sponsor;

(5) The subsidy requested;

(6) A disclosure of any applicant's interest, direct or indirect, in the property or project;

(7) An explanation of how the member intends to monitor the use of any subsidy or other assistance provided by the Bank, including an explanation of how the structure of the project ensures that a preponderance of the subsidy is ultimately received by the targeted groups;

(8) A certification signed by member's managing officer that the subsidy received by the project will not exceed the maximum allowable under the Program and an explanation of how any excess subsidy will be recaptured;

(9) A certification signed by the member's managing officer that the subsidy or other assistance shall only be for authorized uses; and

(10) Such other information as the Bank or Board may require.

#### § 960.5 Project scoring and funding.

(a) *General.* (1) Each Bank will evaluate all applications received from its members that satisfy the use provisions identified in § 960.3(b).

(2) Projects should first be evaluated for:

(i) Compliance with fair housing laws and regulations;

(ii) Feasibility of the project;

(iii) The ability of the member to qualify for an advance to fund the project; and

(iv) The ability of the project to begin using Bank assistance within twelve months.

(3) Projects meeting all four of the requirements of § 960.5(a)(2) that also meet at least three of the priorities identified in paragraph (b) of this section shall be grouped and rated before projects that meet fewer than three of the priorities. Each Bank will



then rank the projects within the first group (i.e., those meeting at least three priorities) based on the criteria contained in paragraphs (c), (d), and (e) of this section. Projects in the second group will be rated only if there are insufficient applications in the first group.

(4) The total possible score a project may receive is 100 points. The maximum numerical score that a Bank may assign any project meeting the criterion identified in paragraph (c) of this section is 25 points; in paragraph (d) of this section, 15 points per criterion; and in paragraph (e) of this section, 10 points per criterion. In determining the number of points to award a project for any given criterion, the Bank should evaluate each proposed project relative to the other proposals received by the Bank. The project(s) best achieving each criterion shall receive the maximum point score available for that criterion, with the remaining projects scored on a declining scale.

(b) *Priorities.* Projects meeting at least three of the following objectives shall have priority for funding:

(1) Projects the principal purpose of which is to finance the purchase, construction, and/or rehabilitation of owner-occupied homes for very low-, low-, and moderate-income households in that priority order; or

(2) Projects the principal purpose of which is to finance the purchase, construction, and/or rehabilitation of rental housing, at least twenty percent (20%) of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term; or

(3) Projects that finance the purchase and/or rehabilitation of housing owned or held by the United States Government or any agency or instrumentality of the United States, for example, the U.S. Department of Housing and Urban Development, Resolution Trust Corporation, Farmers Home Administration, Veterans Administration, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation; or

(4) Projects that finance the purchase, construction, and/or rehabilitation of housing, which are sponsored by a nonprofit organization, a state or political subdivision of a state, a local housing authority, or a state housing agency; or

(5) Projects that empower the urban or rural poor through resident management, homesteading, self-help housing, or similar programs that meet critical urban or rural housing needs; or

(6) Projects that provide permanent housing for the homeless; or

(7) Projects that meet a Bank objective recommended by the Bank's Advisory Council, adopted by the Bank's board of directors, and approved by the Board.

(c) *25 Point Category—Consistency with Priorities.* To ensure consistency with the priorities identified in paragraph (b) of this section, the project(s) that achieves the greatest number of priorities or achieves more than one goal in a clearly superior manner shall be awarded 25 points, and the remaining projects shall be scored on a declining scale.

(d) *15 Point Categories.*—In each of the following three categories, 15 points shall be awarded to the project(s) that best achieves the objective and the remaining projects shall be scored on a declining scale:

(1) *Targeting.* To encourage the flow of Program resources to households with incomes below the statutory maximums, the Bank shall consider the extent to which the project targets households below the statutory maximums. The most points shall be awarded to projects serving the greatest percentage of very low-income households.

(2) *Long-term Retention.* To promote the continued availability of housing affordable for very low-, low- and moderate-income households, the Bank shall consider the extent to which the project facilitates the maximum retention of such housing as evidenced through the existence of long-term guarantees, covenants, land trusts, and similar techniques. The Bank shall evaluate the type of housing and the type of assurances and the percentage of units and years for which these assurances are given.

(3) *Effectiveness.* To ensure that the Program resources help the greatest number of households, the Bank shall consider how effectively the project uses the Program subsidy dollars. Within this context, effectiveness should be measured by the amount of Program subsidy dollars per subsidized unit.

(e) *10 Point Categories.*—In each of the following three categories, 10 points shall be awarded to the project(s) that best achieves the objective and the remaining projects shall be scored on a declining scale:

(1) *Community Involvement.* The Bank shall consider the extent to which a project involves demonstrated support by community organizations, other than as project sponsors, the community interests served by the project, and the extent to which the support is local in nature.

(2) *Community Stability.* The Bank shall evaluate the extent to which a

project maximizes community stability and minimizes the displacement of very low-, low-, and moderate-income households and the extent to which the project serves existing very low-, low-, and moderate-income members of the community.

(3) *Innovation.* The Bank shall consider the extent to which the project involves a particularly new or unusual approach for meeting housing needs in the area being served. The Bank shall consider both nonfinancial and financial innovation in providing affordable housing.

(f) *Application Processing.* (1) No later than 30 days after each offering deadline, the Bank shall forward to the Board for final funding consideration applications from those projects receiving the highest overall rankings. To ensure an adequate pool of projects for Board consideration, each Bank shall forward to the Board the highest ranking projects sufficient to exhaust the funds being made available by the Bank for that funding round plus the next four highest-ranking projects. If in the Board's opinion there is an insufficient number of applications from any Bank, the Board may request that the Bank submit to the Board for review additional eligible applications.

(2) The Bank shall also submit a summary of each project forwarded to the Board. The summary shall:

- (i) Briefly describe the project;
- (ii) Indicate the amount of subsidy recommended by the Bank;
- (iii) Describe how the member and the Bank will monitor the project;
- (iv) Describe the provisions for recapture of the subsidy; and
- (v) State the reason for the points awarded for each of the enumerated objectives.

(3) The Board will review the applications submitted from each Bank to ensure consistency with the Program's priorities, objectives, and regulations. Based on this review and the rankings submitted by the Banks, the Board will make a final funding decision and notify the Banks within 30 days.

#### § 960.6 Reporting requirements.

(a) Each Bank shall provide reports and documentation concerning the Program as the Board may from time to time request.

(b) To meet Board requests for reports and documentation, at least annually each Bank shall require members that receive a subsidy to file periodic reports supported by appropriate documentation, with such Bank continuing until the subsidy has been fully used or repaid by the member.



Reports shall, at a minimum, state the manner in which the member has used the proceeds of the subsidy.

(c) Each Bank shall require the boards of directors of members receiving subsidies to certify that the subsidy has been passed through to the borrower and continues to be used for the approved purposes.

#### § 960.7 Monitoring.

(a) The Board shall have the responsibility and authority to monitor, audit, and review Bank and member compliance with the Program requirements of the Federal Home Loan Bank Act, this part, and other applicable laws and regulations. The Board shall, in its discretion, use all necessary resources, including Office of Inspector General and Office of General Counsel personnel, Program support staff, and specialized contractors to carry out this responsibility.

(b) Each Bank shall monitor, audit, and review its Program and member Program projects and lending to assure full compliance with the requirements of this part. The Banks shall audit the following Program elements: subsidy calculations, pricing, development, promotion, marketing, compliance, member project development, subsidy delivery, loan pricing (including mark-up, fees, and terms), community involvement, and oversight.

(c) Monitoring of Program performance and compliance shall be by audits of applications and supporting documentation, loan-record analysis, specialized reporting, data gathering, site inspections, and such other techniques determined by the Board as necessary to detect and eliminate violations, fraud, mismanagement, and dissipation of Program assets.

(d) Miscalculations, errors, and violations of Program regulations identified by the Board or a Bank shall be corrected immediately. In cases where subsidies have been improperly received, the Bank shall recover the subsidy amount, with fees and interest, if appropriate, in accordance with § 960.8 of this part. Other violations of the Act, this part, or other laws and regulations shall be referred to the Board, the Bank, and other agencies of competent jurisdiction for criminal prosecution or civil recovery.

#### § 960.8 Recapture.

(a) A member shall notify the Bank immediately upon receiving information that the proceeds of a subsidized advance or other subsidized assistance granted by the Bank to the member will not be or are no longer being used for the purposes approved by the Bank and

the Board. The member shall not advance any additional subsidized funds. Furthermore, the amount of committed but unused subsidy or improperly used subsidy shall be recovered and made available by the Bank for future projects.

(b) In recapturing unused or improperly used subsidies, the Bank shall, at its discretion, take any or all of the following actions, without limitation on other remedies:

(1) Reprice the advance to the interest rate charged to members on non-subsidized advances of comparable type and maturity at the time of the original advance;

(2) Call the advance;

(3) Assess a prepayment fee; or

(4) Require the member to reimburse the Bank for the amount of the unused or improperly used subsidy on the advance or other assistance.

(c) To preclude potential windfall profits on the premature sale of rental housing where a Program subsidy has already been fully used to develop or rehabilitate the property, the member shall agree, in the event of such a sale, to:

(1) Provide the Bank with evidence that the sales contract includes a provision that the rental housing will continue to be used for the purpose originally intended; or

(2) Agree to reimburse the Bank an amount equal to the *pro rata* subsidy value considered to have been realized by the seller as profit, based upon the amount of the subsidy and the remaining term of the project as originally proposed.

#### § 960.9 Maximum subsidy.

(a) A Bank shall not offer subsidized advances and other subsidized assistance to members in excess of that amount needed to reduce the monthly housing cost (excluding utilities) for targeted households in the targeted income group to 20 percent of the household's gross monthly income. In projects where other forms of federal, state, local, or private subsidized assistance are being used in conjunction with the AHP, the total amount of subsidy provided shall not exceed this amount.

(b) A member receiving a subsidized advance shall extend credit to qualified borrowers at an effective rate of interest discounted at least to the same extent as the subsidy granted to the member by the Bank.

#### § 960.10 Annual contributions.

(a) Each Bank shall fund its Program in accordance with the following formula:

(1) On January 1 of 1990, 1991, 1992, and 1993, the greater of:

(i) 5 percent of the Bank's net income for the previous year (as defined in § 960.1(i) of this part); or

(ii) That Bank's *pro rata* share of an aggregate of \$50 million to be contributed in total by the Banks, such proration being made on the basis of the net income of the Banks for the previous year.

(2) On January 1, 1994, the greater of:

(i) 6 percent of the Bank's net income for the previous year; or

(ii) That Bank's *pro rata* share of an aggregate of \$75 million to be contributed in total by the Banks, such proration being made on the basis of the net income of the Banks for the previous year.

(3) On January 1, 1995 and each year thereafter, the greater of:

(i) 10 percent of the Bank's net income for the previous year; or

(ii) That Bank's *pro rata* share of an aggregate of \$100 million to be contributed in total by the Banks, such proration being made on the basis of the net income of the Banks for the previous year.

(b) Funding sources for subsidized advances and subsidies under the Program shall be at the discretion of each Bank.

#### § 960.11 Temporary suspension of contributions.

(a) If making the contributions required by § 960.10 of this part will lead to the financial instability of a Bank, the Bank shall immediately notify the Board. The Bank may apply for a temporary suspension of Program contributions. The application for the temporary suspension shall be in writing and shall be accompanied by the Bank's preceding year's annual report, if available, and the Bank's most recent quarterly and monthly financial statements. In addition, the application shall state the period of time for which the Bank seeks a suspension and shall include a plan for returning the Bank to a financially stable position.

(b) In reviewing a Bank application for temporary suspension of contributions, the Board shall consider the following factors and financial data:

(1) The extent to which the Bank's quarterly or annual net income has decreased from the preceding quarter or year and whether such decline is projected to continue;

(2) The extent to which the Bank's paid-in membership capital has declined in any given quarter or year and whether such decline is projected to continue;



(3) The extent to which the Bank's level of advances has declined in any given quarter or year and whether such decline is projected to continue;

(4) Other financial conditions, which, in the opinion of the Bank's board of directors, have resulted, or are likely to result, in the financial instability of the Bank; and

(5) The financial data submitted by the Bank in support of its application.

(c) The Board shall disapprove an application for a temporary suspension if it determines that a Bank's financial instability is a result of:

(1) A change in the terms of advances (other than subsidized advances) not justified by market conditions;

(2) Inordinate operating and administrative expenses;

(3) Operation of the Bank in a manner contrary to accepted banking practices for the Banks;

(4) Mismanagement; or

(5) If for any other reason the temporary suspension is not warranted.

(d) Within thirty (30) days after receipt of a written application made pursuant to paragraph (a) of this section, the Board shall approve or disapprove such application in writing. The Board's decision shall be accompanied by specific findings and reasons for its action and shall state the time period for any temporary suspension. A copy of the decision shall be forwarded to the Congress as provided in paragraph (g) of this section and a copy forwarded to each Bank.

(e) During the term of a temporary suspension approved by the Board, the affected Bank shall provide to the Board such financial reports as the Board shall require to monitor the financial condition of such Bank. If, in the opinion of the Board, a Bank has returned to a position of financial stability prior to the conclusion of the temporary suspension period, the Board may, upon written notice to the Bank, terminate such temporary suspension.

(f) A Bank may apply for an extension of a temporary suspension when such Bank's board of directors determines that the Bank has not, or is not likely to, return to a position of financial stability at the conclusion of the temporary suspension. A request for an extension is to be in written form and shall be approved or disapproved by the Board within thirty (30) days of receipt. The Board's decision to approve or disapprove a request for an extension shall be accompanied by specific findings and reasons for its action and shall state the effective date and time period of any extension. A copy of such decision shall be forwarded to the Congress as provided in paragraph (g) of

this section and a copy forwarded to each Bank.

(g) The Board shall notify the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate of any temporary suspension and any extension of a temporary suspension. A temporary suspension may not take effect until at least 60 days after the Board gives the notice of its action required by this section. An extension of a temporary suspension may not take effect until at least 30 days after the Board gives the notice of its action required by this section. Such suspension or extension shall become effective as determined by the Board, unless a joint resolution of Congress is enacted, prior to the Board's determined effective date, disapproving such suspension.

#### **§ 960.12 Affordable Housing Reserve Fund.**

(a) If a Bank fails to use or commit the amount it is required to contribute to the Program pursuant to § 960.10 of this part in a given year, ninety percent of the amount that has not been used or committed in that year shall be paid over to the Affordable Housing Reserve Fund established and administered by the Board. The ten percent of the unused or uncommitted amount retained by a Bank should be fully used or committed by that Bank during the following year and any remaining portion must be deposited in the Affordable Housing Reserve Fund. For purposes of this section, approval of applications sufficient to exhaust the amount a Bank is required to contribute pursuant to § 960.10 of this part shall constitute use or commitment of the funds.

(b) No later than January 15 of each year, each Bank shall provide to the Board a statement indicating the amount of funds from the prior year, if any, which will be paid over to the Affordable Housing Reserve Fund.

(c) No later than January 31 of each year, the Board will notify the Banks of the total amount of funds available in the Affordable Housing Reserve Fund.

(d) Upon receipt of an application from a member, a Bank may apply to the Board for use of the available Reserve Funds. Such application shall only be made after the Bank has used or committed all of its current annual allocation to the Program. Such application shall state the amount of funds desired, the purpose of the advance to be made with such funds, and the subsidy to be made on the advance or other subsidized assistance. The application shall be accompanied

by the written application of the member requesting a subsidy and shall be acted upon by the Board.

#### **§ 960.13 Coordination.**

The Board and the Banks shall coordinate activities under this part, to the maximum extent possible, with other federal, state, or local agencies and nonprofit organizations involved in affordable housing activities.

#### **§ 960.14 Advisory councils.**

(a) Each Bank shall appoint an Advisory Council of 7 to 15 persons, who reside in the Bank's District and are drawn from community and nonprofit organizations actively involved in providing or promoting low- and moderate-income housing in the District. The Advisory Council shall meet with representatives of the board of directors of the Bank at least quarterly to advise the Bank on very low-, low-, and moderate-income housing programs and needs in the District, and on the use of subsidized advances, direct subsidies, and other assistance for these purposes.

(b) Advisory Councils shall be appointed by the Banks giving consideration to the size and diversity of the District, and the very low-, low-, and moderate-income housing needs of the District.

(c) The composition of the Advisory Council shall reflect the very low-, low-, and moderate-income housing activities and needs within the District, as well as the full range of community and nonprofit organizations' concerns. Local and state housing officials may serve as members of an Advisory Council, provided that such officials do not constitute an undue proportion of the membership.

(d) The nomination and selection process shall be as broad and as participatory as possible. Each Bank shall actively solicit nominations from community and nonprofit organizations, allowing sufficient lead time for responses.

(e) Council members shall be paid travel expenses by the Banks, including transportation and subsistence, for each day devoted to attending meetings.

(f) Council members shall serve terms of 2 years, but the terms shall be staggered to provide continuity in experience and service to the Advisory Council.

(g) Each Council shall designate a member or request that a member of the Bank's staff be designated to act as Secretary of the Advisory Council. The Secretary shall record and maintain minutes of the meetings of the Council. Minutes of each meeting shall contain,



among other things, a record of the persons present, a description of the matters discussed, and recommendations made. The person acting as Secretary at a meeting shall certify to the accuracy of the minutes of that meeting.

(h) Meetings of the Advisory Council shall be held at least once each quarter and may be held more frequently at the call of the Bank.

(i) By January 31 of each year each Bank shall submit to the Board for review and approval a detailed plan for the operation of its Advisory Council during the year. Such plan shall be subject to review by the Board. Plans shall contain such information as the Board may from time to time require and shall be updated by each Bank as necessary.

(j) By January 31 of each year, each Advisory Council shall submit to the Board its analysis of the low-income housing activity of the Bank by which it is appointed.

Dated: February 20, 1991.

By the Federal Housing Finance Board.

Daniel F. Evans,

Chairman.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Parts 21 and 25

[Docket No. NM-46; Special Conditions No. 25-ANM-38]

#### Special Conditions: Embraer Model CBA-123 Airplane; Lightning and High Intensity Radiated Fields (HIRF)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued to Embraer for the Model CBA-123 airplane. This airplane is equipped with high-technology digital avionics systems which perform critical or essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards which the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

**EFFECTIVE DATE:** April 1, 1991.

#### FOR FURTHER INFORMATION CONTACT:

Hank Jenkins, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4046; telephone (206) 227-2141.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 31, 1986, Embraer applied for a type certificate for their new Model CBA-123 airplane. The CBA-123 is a pressurized 19-passenger transport category airplane with a maximum takeoff gross weight of 18,739 pounds, maximum cruise speed of 272 knots, maximum operating altitude of 40,000 feet, and a range of approximately 800 miles fully loaded. It is powered by two Garrett TPF351-20 turboprop engines mounted on the aft fuselage in a pusher configuration. This airplane incorporates a number of novel or unusual design features, such as digital avionics including, but not necessarily limited to, an electronic flight instrument system (EFIS), attitude and heading reference system (AHRS), engine indication and crew alerting system (EICAS), and full authority digital engine control (FADEC), which are vulnerable to lightning and high-intensity radiated fields (HIRF) external to the airplane. In addition to these novel or unusual design features, the Model CBA-123 also incorporates other unrelated novel or unusual design features. Those features will be the subject of separate notices of proposed special conditions.

##### Type Certification Basis

Under the provisions of § 21.17 of the FAR, Embraer must show that the Model CBA-123 meets the applicable requirements of subchapter C in effect on the date of application for that certificate unless: (1) Otherwise specified by the Administrator; (2) compliance with later effective amendments is elected or required under § 21.17; or (3) special conditions are prescribed by the Administrator.

Based on the provisions of § 21.17(a)(1), the Model CBA-123 would be required to comply with part 25, as amended through Amendment 25-60; however, Embraer has elected to comply with part 25, as amended through Amendment 25-61, and is expected to comply with §§ 25.571(e)(2) and 25.905(d), as amended by Amendment 25-72. In addition, SFAR 27 and part 36, through the latest amendments in effect at the time of awarding the type certificate, must be met. These special conditions will form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Model CBA-123 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

##### Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionics systems. There are two regulations that specifically pertain to lightning protection; one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are issued for the Model CBA-123 which require that the new technology electrical and electronic systems, such as the electronic flight instrument system (EFIS), attitude and heading reference system (AHRS), engine indication and crew alerting system (EICAS), and full authority digital engine control (FADEC), be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.



## Lightning

To provide a means of compliance with these special conditions, a clarification on the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory Circular 20-136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20-53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke*: (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents

and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash*: ( $\frac{1}{2}$  Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strikes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of  $\frac{1}{2}$  magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And

3. *Multiple Burst*: (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates or rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical

damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate or rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10 $\mu$ s, the maximum is 50 $\mu$ s. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" ( $\frac{1}{2}$  Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$$i(t) = I_0 (e^{-at} - e^{-bt})$$

where;

t = time in seconds,

i = current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple stroke ( $\frac{1}{2}$ component D)	Multiple burst (component H)
$I_0$ , amp	= 218,810	109,405	54,703	10,572
a, sec $^{-1}$	= 11,354	22,708	22,708	187,191
b, sec $^{-1}$	= 647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

$$I_{\text{peak}} = 200 \text{ KA} \quad 100 \text{ KA} \quad 50 \text{ KA} \quad 10 \text{ KA}$$

and

(di/dt) $_{\text{max}}$ (amp/sec)	=	1.4 $\times 10^{11}$	1.4 $\times 10^{11}$	0.7 $\times 10^{11}$	2.0 $\times 10^{11}$
		@t = 0+sec	@t = 0+sec	@t = 0+sec	@t = 0+sec
di/dt, (amp/sec)	=	1.0 $\times 10^{11}$	1.0 $\times 10^{11}$	0.5 $\times 10^{11}$	—
		@t = .5 $\mu$ s	@t = .25 $\mu$ s	@t = .25 $\mu$ s	—
Action integral (amp $^2$ sec)	=	2.0 $\times 10^6$	0.25 $\times 10^6$	.0625 $\times 10^6$	—



**High-Intensity Radiated Fields (HIRF)**

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as EFIS and EICAS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz-500 KHz.....	80	80
500 KHz-2 MHz.....	80	80
2 MHz-30 MHz.....	200	200
30 MHz-100 MHz.....	33	33
100 MHz-200 MHz.....	33	33
200 MHz-400 MHz.....	150	33
400 MHz-1 GHz.....	8,300	2,000
1 GHz-2 GHz.....	9,000	1,500
2 GHz-4 GHz.....	17,000	1,200
4 GHz-6 GHz.....	14,500	800
6 GHz-8 GHz.....	4,000	666
8 GHz-12 GHz.....	9,000	2,000
12 GHz-20 GHz.....	4,000	500
20 GHz-40 GHz.....	4,000	1,000

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Airworthiness Authorities.

**Discussion of Comments**

Notice No. SC-90-5-NM for the Embraer Model CBA-123 airplane was published in the Federal Register on

November 9, 1990 [55 FR 47065]. No comments were received, and the special conditions are adopted as proposed.

**Conclusion**

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

**List of Subjects in 14 CFR Parts 21 and 25**

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

**The Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Embraer Model CBA-123 airplane:

**1. Lightning Protection.**

a. Each electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

**2. Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF)**

Each electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to externally radiated electromagnetic energy.

3. The following definitions apply with respect to these special conditions:

**Critical Functions.** Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

**Essential Functions.** Functions whose failure would contribute to or cause a

failure condition which would significantly impact the safety of the airplane or the ability of the flight crew to cope with adverse operating conditions.

Issued in Renton, Washington, on February 20, 1991.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-4746 Filed 2-28-91; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Parts 21 and 25**

[Docket No. NM-48; Special Conditions No. 25-ANM-39]

**Special Conditions: McDonnell Douglas Model DC-8-70 Series Airplanes; Lightning and High Intensity Radiated Fields (HIRF)**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the McDonnell Douglas Model DC-8-70 series airplanes modified by The Dee Howard Company. These airplanes are equipped with high-technology digital avionics systems that perform critical and essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards which the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

**EFFECTIVE DATE:** February 20, 1991.

**FOR FURTHER INFORMATION CONTACT:**

Greg Holt, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4046; telephone (206) 227-2140.

**SUPPLEMENTARY INFORMATION:****Background**

On February 2, 1990, The Dee Howard Company of San Antonio, Texas, applied for a supplemental type certificate to modify the McDonnell Douglas Model DC-8-70 series airplanes. The DC-8-70 is a three-crew, four-engine airplane with a maximum takeoff weight of approximately 335,000 pounds. The modification incorporates a number of novel or unusual design



features, such as digital avionics consisting of dual electronic flight instrument systems (EFIS), dual inertial navigation systems (INS), a dual air data computer (ADC), and an integrated autopilot system, which are vulnerable to lightning and high-intensity radiated fields (HIRF) external to the airplane.

#### Supplemental Type Certification Basis

Under the provisions of § 21.115, Subpart C, of the FAR, The Dee Howard Company must show that the altered Model DC-8-70 meets the regulations incorporated by reference in Type Certificate No. 4A25, as specified in § 21.101(a), unless: (1) Otherwise specified by the Administrator; (2) compliance with later effective amendments is elected or required under §§ 21.101(a) and (b); or (3) special conditions are prescribed by the Administrator.

Based on the provisions of §§ 21.101(a) and (b), The Dee Howard Company will have to show compliance with the basic type certification basis per Type Certificate Data Sheet (TCDS) No. 4A25, plus the following FAR Part 25 requirements, up to Amendment 25-70, that are deemed necessary to provide a level of safety equivalent to that established by the regulations incorporated by reference in TCDS 4A25: § 25.255; § 25.307(b); §§ 25.561 (c) and (d); §§ 25.581 (a) and (b) (systems only); § 25.603; §§ 25.613 (c) and (e); § 25.671 (a), (b), and (c); § 25.672 (a), (b), and (c) (autopilot); §§ 25.1303 (a), (b), and (c); § 25.1307(e); §§ 25.1309 (a) thru (g); §§ 25.1321 (a) thru (e); § 25.1322 (a) thru (d); §§ 25.1323 (a), (c), and (d); §§ 25.1329 (a) thru (h); §§ 25.1331 (a) and (b); § 25.1353(c); §§ 25.1355 (a) and (c); §§ 25.1359 (a) thru (d); §§ 25.1431 (a), (b), and (c); § 25.1525; § 25.1529; and § 25.1541.

If the Administrator finds that the applicable airworthiness regulations (i.e., Part 4b plus applicable part 25 requirements) do not contain adequate or appropriate safety standards for the Model DC-8-70 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.101(b)(2) to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 1.28 and 11.29(b), and become part of the type of certification basis in accordance with § 21.115(a).

#### Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable

level of safety with the new technology avionic systems. There are two regulations that specifically pertain to lightning protection; one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are issued for the Model DC-8-70 which require that the new technology electrical and electronic systems, such as the electronic flight instrument system (EFIS), the dual inertial navigation systems (INS), the dual air data computer (ADC), and the integrated autopilot system be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

#### Lightning

To provide a means of compliance with the special conditions, clarification of the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory Circular 20-136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20-53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its

systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

**1. First Return Stroke:** (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

**2. Multiple Stroke Flash:** (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) the minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation, and,

**3. Multiple Burst:** (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients



resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be

used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10 $\mu$ s, the maximum is 50 $\mu$ s. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) the minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The

individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" ( $\frac{1}{2}$  Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$$i(t) = I_0 (e^{-a \cdot t} - e^{-b \cdot t})$$

where:

t = time in seconds,

i = current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple stroke ( $\frac{1}{2}$ component D)	Multiple burst (component H)
$I_0$ , amp	218,810	109,405	54,703	10,572
a, sec <sup>-1</sup>	11,354	22,708	22,708	187,191
b, sec <sup>-1</sup>	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

$$I_{\text{peak}} = 200 \text{ KA } 100 \text{ KA } 50 \text{ KA } 10 \text{ KA}$$

and

(di/dt) <sub>max</sub> (amp/sec)	=	1.4 $\times 10^{11}$	1.4 $\times 10^{11}$	0.7 $\times 10^{11}$	2.0 $\times 10^{11}$
		@t=0+sec	@t=0+sec	@t=0+sec	@t=0+sec
di/dt, (amp/sec)	=	1.0 $\times 10^{11}$	1.0 $\times 10^{11}$	0.5 $\times 10^{11}$	—
		@t=.5 $\mu$ s	@t=.25 $\mu$ s	@t=.25 $\mu$ s	—
Action integral (amp <sup>2</sup> sec)	=	2.0 $\times 10^6$	0.25 $\times 10^6$	.0625 $\times 10^6$	—

#### High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as EFIS and EICAS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz-500 KHz.....	80	80
500 KHz-2 MHz.....	80	80
2 MHz-30 MHz.....	200	200
30 MHz-100 MHz.....	33	33
100 MHz-200 MHz.....	33	33
200 MHz-400 MHz.....	150	33
400 MHz-1 GHz.....	8,300	2,000
1 GHz-2 GHz.....	9,000	1,500
2 GHz-4 GHz.....	17,000	1,200
4 GHz-8 GHz.....	14,500	800
6 GHz-8 GHz.....	4,000	668
8 GHz-12 GHz.....	9,000	2,000
12 GHz-20 GHz.....	4,000	509
20 GHz-40 GHz.....	4,000	1,000

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Airworthiness Authorities.

#### Discussion of Comments

Notice of Proposed Special Conditions No. SC-91-1-NM for the McDonnell Douglas Model DC-8-70 series airplanes was published in the Federal Register on January 17, 1991, for public comment. No comments were received, and the special conditions are adopted as proposed.

As a delay in issuance of these special conditions would significantly affect the applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that good cause exists for making these special conditions effective upon issuance, as opposed to 30 days from the date of publication in the Federal Register.

#### Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

#### List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.



The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

#### The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the modified McDonnell Douglas Model DC-8-70 series airplanes:

##### 1. Lightning Protection.

a. Each electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

##### 2. Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).

Each electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to externally radiated electromagnetic energy.

3. The following definitions apply with respect to these special conditions:

**Critical Function.** Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

**Essential Functions.** Functions whose failure would contribute to or cause a failure condition which would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on February 20, 1991.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.  
[FR Doc. 91-4745 Filed 2-28-91; 8:45 am]

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#### 14 CFR Part 39

[Docket No. 90-NM-209-AD; Amendment 39-6917]

#### Airworthiness Directives; Boeing Model 747 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires inspection for cracks in the fuselage station 2598 upper bulkhead, which supports the horizontal stabilizer, and repair, if necessary. This amendment would require installation of the terminating modification for the inspections required by the current airworthiness directive. This amendment is prompted by reports of additional cracking detected by the inspections required by the current airworthiness directive. This condition, if not corrected, could result in loss of the horizontal stabilizer.

**EFFECTIVE DATE:** April 5, 1991.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven C. Fox, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2777. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-07-11, Amendment 39-8556 (55 FR 11161, March 27, 1990), applicable to Boeing Model 747 series airplanes, to require inspection for cracks in the fuselage station 2598 upper bulkhead, which supports the horizontal stabilizer, and repair, if necessary, was published in the Federal Register on November 6, 1990 (55 FR 46681).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America, on behalf of its members, and one foreign operator of Boeing Model 747 airplanes requested an

extension of the compliance time for the proposed mandatory modification requirement from 2 years to periods ranging from 3 to 5 years, since it would be more convenient to accomplish this modification during normally scheduled maintenance. The required inspections would maintain safety in the interim. One operator indicated that such an extension is justified since its fleet of affected airplanes had accumulated as much as 27,000 flight cycles and had not experienced the addressed cracking problem. The FAA does not concur. The requirement to modify the bulkhead structure is not based on the number of cycles, flight hours, or age of the aircraft, but rather on the flight loads which can occur on the horizontal stabilizer. This modification requirement was also supported by the Boeing Model 747 Airworthiness Assurance Task Force and the manufacturer, both of whom concurred that the requirement to modify the airplanes is unrelated to an aircraft's age. It represents the maximum interval of time wherein the modification can be accomplished and an acceptable level of safety can be maintained. Therefore, the rule remains unchanged.

A member of the ATA further commented that long lead times may be encountered in obtaining retrofit kits and, therefore, the 2 year compliance time should be extended. The FAA does not concur. Since the parts required are common aluminum sheets and fasteners which would normally be available to any airline or repair station capable of performing repairs to aircraft, the FAA cannot foresee that any parts unavailability problem would occur.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 224 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 174 airplanes of U.S. registry will be affected by this AD, that it will take approximately 150 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$1,044,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is



determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

#### PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6556 (55 FR 11161, March 27, 1990), AD 90-07-11, with the following new airworthiness directive:

**Boeing:** Applies to Model 747 series airplanes, line numbers 002 through 226, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of the horizontal stabilizer, accomplish the following:

A. Within the next 30 days after April 13, 1990 (the effective date of Amendment 39-6556), perform either a close detailed visual inspection or a high frequency eddy current (HFEC) inspection of the fuselage station 2598 bulkhead upper web in the corners of the access cut-out, in accordance with Boeing Alert Service Bulletin 747-53A2332, dated March 8, 1990. Repeat these inspections as follows:

1. If the immediately preceding inspection was accomplished visually, the next inspection must be conducted within 250 landings.

2. If the immediately preceding inspection was accomplished using HFEC, the next inspection must be conducted within 1,000 landings.

B. If cracks less than 1.5 inches are found, repair prior to further flight, in accordance with repair procedures defined in Boeing

Alert Service Bulletin 747-53A2332, dated March 8, 1990, or accomplish the terminating modification specified in paragraph E. of this AD. Inspect repairs for cracks in accordance with paragraph A. of this AD, until the terminating modification specified in paragraph E. of this AD, is accomplished.

C. If cracks are found that are 1.5 inches or longer, modify prior to further flight by installing the terminating modification specified in paragraph E. of this AD.

D. Within the next 30 days after April 13, 1990 (the effective date of Amendment 39-6556), remove the fastener common to the web and the tab on the vertical stiffener, at each corner of the upper bulkhead cut-out, and perform a high frequency eddy current inspection of the open hole in accordance with Boeing Alert Service Bulletin 747-53A2332, dated March 8, 1990. If no cracks are found, replace the fastener with a 1/8-inch oversized equivalent fastener. If any cracks are found, prior to further flight, accomplish the repair and inspections required by paragraph B. of this AD, or modify prior to further flight in accordance with the terminating modification specified in paragraph E. of this AD.

E. Within the next 2 years after the effective date of this AD, accomplish the terminating modification specified in Boeing Alert Service Bulletin 747-53A2332, dated March 8, 1990. Installation of the modification constitutes terminating action for the inspections required by this AD.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

**Note:** Any alternate means of compliance previously approved for paragraph G. of AD 90-07-11, Amendment 39-6556, constitutes an alternate means of compliance with paragraph F. of this AD.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39-6556, AD 90-07-11.

This amendment becomes effective April 5, 1991.

Issued in Renton, Washington, on February 19, 1991.

Darrell M. Pederson,  
Acting Manager, Transport Airplane  
Directorate, Aircraft Certification Service.  
[FR Doc. 91-4747 Filed 2-28-91; 8:45 am]  
BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 90-NM-214-AD; Amendment 39-6918]

**Airworthiness Directives; Boeing Model 747-200, 747-300, and 747-400 Series Airplanes Equipped With General Electric CF6-80C2 PMC and CF6-80C2 FADEC Engines, and Pratt and Whitney PW4000 Engines**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747-200, 747-300, and 747-400 series airplanes, which requires inspection of each outboard engine fuel feed line in the engine strut to determine if interference with an adjacent pneumatic duct clamp has caused damage, and, if necessary, repair or replacement of the fuel feed tube. In addition, this amendment requires inspection and replacement of the adjacent pneumatic duct clamp with a non-rotating type clamp if a non-rotating clamp is not already installed. This amendment is prompted by reports of a fuel leak in the number 4 engine strut, due to a punctured fuel feed line that had chafed as a result of contact with the clamp. This condition, if not corrected, could result in an engine fire.

**EFFECTIVE DATE:** April 5, 1991.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sulmo Mariano, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2686. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an



airworthiness directive, applicable to Boeing Model 747-200, 747-300, and 747-400 series airplanes, which requires inspection of each outboard engine fuel feed line in the engine strut to determine if interference with an adjacent pneumatic duct clamp has caused damage, and, if necessary, repair or replacement of the fuel feed tube, was published in the *Federal Register* on November 20, 1990 (55 FR 48243).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The only comment received did not object to the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 42 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 9 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$2,160.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

#### PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Applies to Model 747 series airplanes, equipped with General Electric CF6-80C2 PWC and CF6-80C2 FADEC engines, and Pratt and Whitney PW4000 Engines, as listed in Boeing Service Bulletin 747-36A2097, dated August 16, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To eliminate the potential of an engine fire due to a punctured fuel feed line, accomplish the following:

A. Within the next 60 days or 450 hours time-in-service after the effective date of this AD, whichever occurs first, inspect the upper gap area in the engine strut numbers 1 and 4 to determine if interface with the adjacent pneumatic duct clamp has caused damage to the fuel feed tube, such as chafing or punctures. If any such damage is found, prior to further flight, repair or replace the fuel tube. If a non-rotating clamp is not installed, prior to further flight, install a non-rotating clamp one inch from the existing stationary clamp in accordance with Boeing Service Bulletin 747-36A2097, dated August 16, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective April 5, 1991.

Issued in Renton, Washington, on February 19, 1991.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 91-4748 Filed 2-28-91; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 90-ASW-46; Amendment 39-6857]

#### Airworthiness Directives; Schweizer Aircraft Corporation (Hughes Helicopter Inc.) Model 269C Series Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), which requires an immediate visual inspection, a repetitive dye penetrant and visual inspection for cracks, and a terminating action by requiring replacement of the tailboom center attachment (saddle) fitting on Schweizer Aircraft Corporation (Hughes Helicopters, Inc.) Model 269C series helicopters. The AD is prompted by four reports of fatigue damage in the tailboom center attachment saddle fitting. This damage could result in the complete failure of the fitting and the resultant loss of the tailboom and consequently, control of the helicopter.

**EFFECTIVE DATE:** March 29, 1991.

**ADDRESSES:** This applicable service information may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902, or may be examined in the Rules Docket, Office of the Assistant Chief Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Building 3B, Room 158, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Socias, Aerospace Engineer, FAA, New York Aircraft Certification Office, Airframe Branch, ANE-172, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581, telephone (516) 791-6220, Fax (516) 791-9024.

**SUPPLEMENTARY INFORMATION:** Four helicopter accidents have occurred involving a complete or partial failure of the tailboom center attachment fitting. One accident occurred in Sweden, in which a tailboom center attachment (saddle) fitting, part number (P/N) 269A2324-7, failed. Another accident occurred in Canada, in which the tailboom center attachment fitting



reportedly failed in flight as a result of fatigue. Two other accidents occurred in which fatigue damage in the tailboom center attachment (saddle) fitting was reported. The FAA has only recently received investigative findings of a foreign airworthiness authority concerning the accident in Canada. In October 1990, the manufacturer recommended and the FAA agrees that mandatory inspections of the magnesium tailboom center attachment fittings are necessary until the existing magnesium saddle fitting, P/N 269A2324-7, is replaced with a new aluminum saddle fitting, P/N 269A2324-11.

FAA-approved Schweizer Aircraft Corporation Service Bulletin B-239, dated October 8, 1990, which contains the inspection procedures and retirement schedule of the magnesium tailboom center attachment (saddle) fitting, P/N 269A2324-7, installed on Model 269C helicopters, pertains to this AD.

Since this situation is likely to exist or develop on other helicopters of the same type design, this AD requires 10-power visual inspections and dye penetrant inspections for cracks, looseness, and corrosion in the tailboom and center attachment (saddle) fitting, and replacement of this fitting as terminating action.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be

significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

#### PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Schweizer Aircraft Corporation (Hughes Helicopters, Inc.): Amendment 39-6857. Docket No. 90-ASW-46.

Applicability: All Model 269C series helicopters, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent fatigue failure of the magnesium tailboom center attachment (saddle) fittings which could result in loss of the tailboom of the helicopter, accomplish the following:

(a) For helicopters with a magnesium tailboom center attachment fitting, P/N 269A2324-7, installed with 400 hours' or less total time in service, perform the following in accordance with the 269 Series Basic Handbook of Maintenance Information, as revised by Temporary Revision No. R-42, dated October 8, 1990 (HMI):

(1) Prior to further flight after the effective date of this AD, and thereafter at intervals not to exceed 50 hours' time in service from the last inspection, inspect the magnesium tailboom center attachment fitting and tailboom visually using a 10-power or higher magnifying glass, in accordance with the HMI.

(2) Within 25 hours' time in service after the effective date of this AD, and thereafter at intervals not to exceed 100 hours' time in service from the last inspection, inspect the magnesium tailboom center attachment fitting using a dye penetrant inspection in accordance with the HMI.

(3) Remove and replace the magnesium tailboom center attachment fitting, P/N 269A2324-7, with an aluminum tailboom center attachment fitting, P/N 269A2324-11 or P/N 269A2324-11T, as prescribed by the HMI prior to attaining 500 hours' total time in service.

(b) For helicopters with magnesium tailboom center attachment fitting, P/N

269A2324-7, installed with more than 400 hours' total time in service, perform the following in accordance with the HMI:

(1) Prior to further flight and thereafter at an interval not to exceed 50 hours' time in service from the last inspection, inspect the tailboom center attachment fitting using a dye penetrant inspection as prescribed in paragraph (a)(2) of this AD.

(2) Before the first flight of each day inspect the tailboom center attachment fitting and tailboom visually using a 10-power or higher magnifying glass as prescribed in paragraph (a)(1) of this AD.

(3) Remove and replace the magnesium tailboom center attachment fitting, P/N 269A2324-7, with an aluminum tailboom center attachment fitting, P/N 269A2324-11 or P/N 269A2324-11T, as prescribed in the HMI, within the next 100 hours time in service after the effective date of this AD.

(c) Remove and replace the magnesium tailboom center attachment, P/N 269A2324-7, with an aluminum tailboom center attachment fitting, P/N 269A2324-11 or P/N 269A2324-11T, fitting before further flight if it is cracked or otherwise unserviceable.

Note: Schweizer Service Bulletin B-239, dated October 8, 1990, pertains to this AD. The tailboom assembly service life is 2,100 hours.

(d) Aircraft may be ferried in accordance with the provisions of FAR sections 21.197 and 21.199 to a base where the requirements of this AD can be accomplished.

(e) Alternate inspections, modification, or adjustments of the compliance times, which provide an equivalent level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, 181 South Franklin Avenue, Room 202, Valley Stream, NY 11581.

Amendment 39-6857 becomes effective on March 29, 1991.

Issued in Fort Worth, Texas, on January 31, 1991.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 91-4749 Filed 2-28-91; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 91-ANE-07; Amdt. 39-6919]

**Airworthiness Directives; Pratt & Whitney (PW) PW4152, PW4156, and PW4158 Turbofan Engines**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule, request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to PW4152, PW4156, and PW4158 turbofan engines, installed on Airbus A310-300 and A300-600 type aircraft, which requires the engine cowling



anti ice to be "ON" prior to takeoff and during any aircraft inflight operation below 15,000 feet. This amendment is prompted by eight engine failures during pre-delivery testing and is required to prevent high pressure compressor (HPC) damage and surge caused by excessive blade/airseal interference. This condition, if not corrected, could result in HPC failure and possible total loss of aircraft engine thrust.

**DATES:** Effective March 1, 1991.

Comments must be received no later than March 28, 1991.

**ADDRESSES:** Send comments in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 91-ANE-07, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, or deliver in duplicate to room 311 at the above address.

Comments may be inspected at the above location in room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Airbus Industrie, Performance & Operations Engineering Department, Flight Division, Engineering Directorate, 1 Rond Point, Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

**FOR FURTHER INFORMATION CONTACT:** Chris Gavriel, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (617) 273-7084.

**SUPPLEMENTARY INFORMATION:** This action is prompted by six engine failures which occurred during production acceptance testing at Pratt & Whitney test facilities, and by two additional inflight engine failures experienced during a specialized flight test program intended to corroborate the production test failures. All failed engines exhibited excessive HPC blade tip to airseal interference, resulting in a substantial loss of outer airseal material from the ninth through fifteenth stages of the HPC. An investigation has identified that HPC blade tip to airseal clearances are insufficient to ensure proper engine operation during rapid acceleration to takeoff power when that acceleration is preceded by several minutes of operation at takeoff power and minimum idle rotor speed, sequentially. At minimum idle rotor speed, compressor bore internal cooling flow is

insufficient to provide the necessary compressor rotor thermal contraction and resultant blade/airseal clearances to prevent excessive blade tip rubbing during a subsequent rapid acceleration to takeoff power. For this reason, higher inflight engine idle rotor speeds are needed to assure proper HPC bore cooling airflow. Although no revenue service engine failures have been reported, the flight test failures confirm that certain inflight operating profiles can occur which produce excessive blade tip to airseal interference. This condition, if not corrected, could result in an HPC failure and possible total loss of engine thrust.

Since this condition is likely to exist or develop in other engines of the same type design, this AD requires that the engine anti ice be switched to the "ON" position prior to takeoff, and be in the "ON" position for any flight operation below 15,000 feet to provide the required increase in idle rotor speed. The AD also requires installation of a placard in the cockpit with the appropriate instructions to highlight that requirement to the flight crew.

Since this condition can result in total loss of engine thrust and inflight shutdown should a HPC failure occur, there is a need to minimize the exposure of revenue service engines to operations where HPC blade tip to airseal clearances are insufficient to ensure proper engine operation. Therefore, safety in air transportation requires adoption of this regulation without prior notice and public comment. It is found that notice and public procedures are impracticable, and good cause exists for the adoption of the amendment without public comment and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ANE-07, 12 New England Executive Park, Burlington, Massachusetts 01803-5299. All communications received by the deadline date indicated above will be considered by the Administrator, and the AD may be changed in light of the comments received.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

#### PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

**Pratt & Whitney:** Applies to Pratt & Whitney (PW) PW4152, PW4156, and PW4158 turbofan engines installed on, but not limited to, Airbus A300 and Airbus A310 aircraft.

Compliance is required within 30 days after the effective date of this airworthiness directive (AD), unless previously accomplished.

To prevent a high pressure compressor (HPC) failure that can result in a total loss of aircraft engine thrust, accomplish the following:

(a) The ENGINE ANTI ICE must be switched to "ON" prior to takeoff and must



be in the "ON" position for any flight operation below 15,000 feet.

(b) Install placards in the cockpit of Airbus A310-300 and A300-600 aircraft, just above the Captain and First Officer Primary Flight Displays, indicating the following: "BEFORE TAKE OFF, SET ENG. ANTI ICE ON. KEEP ENG. ANTI ICE ON FOR ANY OPERATION BELOW 15,000 FT."

Note: Further information may be obtained from Airbus Industrie Service Information Letter 72-001, Revision 1, dated September 18, 1990.

(c) Aircraft may be ferried in accordance with the provisions of FARs 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD, may be approved by the Manager, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

All persons affected by this AD who have not already received the appropriate service information may obtain copies upon request to Airbus Industrie, Performance & Operations Engineering Department, Flight Division, Engineering Directorate, 1 Rond Point, Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Room 311, 12 New England Executive Park, Burlington, Massachusetts.

This amendment becomes effective March 1, 1991.

Issued in Burlington, Massachusetts, February 15, 1991.

Ronald L. Vavruska,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91-4742 Filed 2-28-91; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 5

#### Delegations of Authority and Organization; Editorial Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority to update some obsolete references to the Assistant General Counsel. This action will improve the accuracy and clarity of the regulations.

EFFECTIVE DATES: March 1, 1991.

#### FOR FURTHER INFORMATION CONTACT:

Robin F. Thomas, Office of Regulatory Affairs (HFC-222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: FDA is amending the regulations for delegations of authority in § 5.10(b) (21 CFR 5.10(b)) and § 5.105 (21 CFR 5.105) to remove the current references to the Assistant General Counsel. Currently the Assistant General Counsel is known as the Chief Counsel or Associate General Counsel, and the term "Assistant" is obsolete.

The amendments are wholly editorial in nature. For this reason, FDA finds for good cause that notice and public procedure and delayed effective date are unnecessary (5 U.S.C. 553(b)(B) and (d)).

#### List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

#### PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 2271; 15 U.S.C. 638, 1261-1282, 3701-3711a; secs. 2-12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451-1481); 21 U.S.C. 41-50, 61-63, 141-149, 467f, 679(b), 801-886, 1031-1309; secs. 201-903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321-393); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354-360F, 361, 362, 1701-1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242n, 243, 262, 263, 263b-263n, 264, 265, 300u-300u-5, 300aa-1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007-10008; E.O. 11490, 11921, and 12591.

#### § 5.10 [Amended]

2. Section 5.10 *Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials* is amended in paragraph (b) by removing "Assistant" and replacing it with the words "the Chief Counsel of the Food and Drug Administration, i.e., the Associate"; and by adding a comma after "Division".

#### § 5.105 [Amended]

3. Section 5.105 *Chief Counsel, Food and Drug Administration* is amended by removing the word "Assistant" and replacing it with the word "Associate".

Dated: February 26, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-4944 Filed 2-28-91; 8:45 am]

BILLING CODE 4160-01-M

#### 21 CFR PART 520

#### Oral Dosage Form New Animal Drugs Not Subject to Certification; Kanamycin Sulfate, Pectin, Bismuth Subcarbonate, Activated Attapulgite

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a Supplemental new animal drug application (NADA) filed by Fort Dodge Laboratories. The supplement provides for the use of a revised tablet formulation containing kanamycin (as the sulfate), pectin, bismuth subcarbonate, and activated attapulgite and deleting aminopentamide hydrogen sulfate. The product is indicated for the treatment of bacterial enteritis caused by kanamycin susceptible organisms and for symptomatic relief of associated acute bacterial diarrhea in dogs.

EFFECTIVE DATE: March 1, 1991.

#### FOR FURTHER INFORMATION CONTACT:

John R. Markus, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4313.

SUPPLEMENTARY INFORMATION: Fort Dodge Laboratories, Fort Dodge, IA 50501, filed a supplement to NADA 42-841 which provided updated labeling and a revised tablet formulation deleting aminopentamide hydrogen sulfate. The supplement was approved by letter dated February 21, 1991. The regulations are amended by removing the previously approved tablet formulation from 21 CFR 520.1204 and adding new § 520.1205 to reflect approval of the revised formulation. In addition, the regulation in § 520.1204 is amended to reflect approval of the oral suspension only.

Under 21 CFR 514.106(b)(2) approval of this supplement did not require a reevaluation of the underlying safety or effectiveness data in the NADA. However, in accordance with the freedom of information provisions of 21 CFR part 20 and § 514.11(e)(2)(i), a summary of data and information submitted to support approval of the NADA may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600



Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), approval of this supplemental application does not qualify for exclusivity because new clinical or field investigations were not required for approval.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

#### PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1204 is amended by revising the section heading, by removing in paragraph (a) the phrase "tablet or each", and by removing in paragraph (c)(2) the phrase "one tablet or" to read as follows:

§ 520.1204 Kanamycin sulfate, aminopentamide hydrogen sulfate, pectin, bismuth subcarbonate, activated attapulgit suspension.

3. Section 520.1205 is added to read as follows:

§ 520.1205 Kanamycin sulfate, pectin, bismuth subcarbonate, activated attapulgit tablets.

(a) *Specifications.* Each tablet contains 100 milligrams of kanamycin (as the sulfate), 25 milligrams of pectin, 250 milligrams of bismuth subcarbonate, and 500 milligrams of activated attapulgit.

(b) *Sponsor.* See No. 000856 in § 510.600(c) of this chapter.

(c) *Conditions of use—(1) Amount.* One tablet per 44 kilograms (20 pounds) of body weight every 8 hours. Maximum dose 3 tablets every 8 hours. For animals under 22 kilograms (10 pounds) 1/2 tablet every 8 hours. The initial loading dose should be twice the amount of a single dose.

(2) *Indications for use.* For the treatment of bacterial enteritis caused by organisms susceptible to kanamycin and the symptomatic relief of associated diarrhea in dogs.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: February 21, 1991.

Robert Furrow,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 91-4795 Filed 2-28-91; 8:45 am]

BILLING CODE 4160-01-M

#### 21 CFR Part 520

#### Animal Drugs, Feeds, and Related Products; Oxfendazole Suspension; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that published in the Federal Register of November 8, 1990 (55 FR 46942). That document amended the animal drug regulations to reflect approval of Syntex Animal Health, Inc.'s, new animal drug application (NADA) 140-854 for the use of oxfendazole suspension as a bovine anthelmintic (except for use in lactating dairy cattle). The approval document limited the use to beef cattle. This document corrects that error.

EFFECTIVE DATE: November 8, 1990.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Syntex Animal Health, Inc., 3401 Hillview Ave., Palo Alto, CA 94304, is the sponsor of NADA 140-854 which provides for the use of oxfendazole suspension as a bovine anthelmintic (except for use in lactating dairy cattle). The approval document inadvertently limited the use to beef cattle. This document corrects that publication to indicate that approval is for use in cattle except for lactating dairy cattle by amending 21 CFR 520.1630(d)(2) by removing the phrase "beef cattle" and inserting "cattle".

#### List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to

the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

#### PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1630 is amended by revising the heading in paragraph (d)(2) and the first sentence in paragraph (d)(2)(iii) to read as follows:

§ 520.1630 Oxfendazole suspension.

\* \* \* \* \*

(d) \* \* \*

(2) *Cattle.* \* \* \*

(iii) *Limitations.* For use in cattle only. \* \* \*

Dated: February 22, 1991.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 91-4794 Filed 2-28-91; 8:45 am]

BILLING CODE 4160-01-M

#### 21 CFR Part 556

#### Tolerances for Residues of New Animal Drugs in Food; Halofuginone Hydrobromide

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. The supplement provides for revising the tolerance for safe residues of halofuginone hydrobromide in the edible broiler tissues from 0.1 to 0.16 part per million (ppm).

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202-206 North, Somerville, NJ 08876, has filed a supplement to NADA 130-951. The NADA provides for the use of Stenorol® (halofuginone hydrobromide) Type A medicated article to make Type C medicated broiler feed for the prevention of coccidiosis. The supplement provides for revising the



tolerance for safe residues of halofuginone hydrobromide in edible broiler tissues by changing the marker residue concentration from 0.1 to 0.16 ppm in liver for parent halofuginone hydrobromide. This revised tolerance reflects a re-evaluation of the data originally submitted in the NADA as well as an evaluation of a residue study newly submitted with this supplemental application. The safe concentrations for total halofuginone hydrobromide residues in uncooked edible broiler tissues remain 0.1 ppm in muscle, 0.3 ppm in liver, and 0.2 ppm in skin with adhering fat. The supplemental NADA is approved and 21 CFR 556.308 is amended to reflect the approval. The basis for approval is discussed in the revised freedom of information summary. The change implemented by approval of the supplemental application does not qualify for exclusivity under the Generic Animal Drug and Patent Term Restoration Act, because exclusivity is not to be granted for an increase in a tolerance. (See 54 FR 35534; August 28, 1989.)

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### List of Subjects in 21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 556 is amended as follows:

#### PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: Secs. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

2. Section 556.308 is amended by revising the second and third sentences to read as follows:

#### § 556.308 Halofuginone hydrobromide.

\* \* \* A tolerance is established in broilers of 0.16 part per million and in turkeys of 0.1 part per million for parent halofuginone hydrobromide in liver. These marker residue concentrations in liver correspond to total residue concentrations of 0.3 part per million in liver. \* \* \*

Dated: February 25, 1991.

Robert C. Livingston,  
Director, Office of New Animal Drug  
Evaluation, Center for Veterinary Medicine.  
[FR Doc. 91-4855 Filed 2-28-91; 8:45 am]  
BILLING CODE 4160-01-M

#### UNITED STATES INFORMATION AGENCY

##### 22 CFR Part 514

[Rulemaking No. 3]

#### Citizenship of Responsible Officers and Sponsors; Exchange—Visitor Program; Correction

AGENCY: United States Information Agency

ACTION: Final rule; correction.

**SUMMARY:** The Agency issued a final rule on November 8, 1990, at 55 FR 46943, concerning the citizenship of Responsible Officers and Sponsors of designated exchange visitor programs. Because of an administrative error a part of one sentence in § 514.1 was incorrectly stated. Specifically, paragraph 4(i) of the term "Citizen of the United States" in § 514.1 was not intended to apply exclusively to subsection (3) of section 501(c) of the Internal Revenue Code but rather to any non-profit organization organized under any subsection of section 501(c) of the Internal Revenue Code. This notice corrects the error.

**EFFECTIVE DATE:** November 8, 1990.

**ADDRESSES:** Merry Lynn, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

**FOR FURTHER INFORMATION CONTACT:** Merry Lynn, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547 (202) 619-6829.

Accordingly, the rule amending 22 CFR, which was published in the Federal Register on November 8, 1990 at page 64946, in the second column, is

corrected by correctly revising the definition of "Citizen of the United States" as follows:

#### § 514.1 Definitions.

\* \* \* \* \*

*Citizen of the United States* means:

(1) An individual who is a citizen of the United States or one of its territories or possessions; or,

(2) A general or limited partnership created or organized under the laws of the United States, or of any State, the District of Columbia, or a territory or possession of the United States, of which a majority of the partners are citizens of the United States; or,

(3) A for-profit corporation, association, or other legal entity created or organized under the laws of the United States, or of any State, the District of Columbia, or a territory or possession of the United States, which

(i) Has its principal place of business in the United States; and

(ii) Whose shares or voting interests are publicly traded on a U.S. stock exchange; or, if its shares or voting interests are not publicly traded on a U.S. stock exchange, it shall nevertheless be deemed to be a citizen of the United States if a majority of its officers, Board of Directors, and its shareholders are citizens of the United States; or,

(4) A non-profit corporation, association, or other legal entity created or organized under the laws of the United States, or any States, the District of Columbia, or a territory or possession of the United States, and which is

(i) Qualified with the Internal Revenue Service as a tax-exempt organization pursuant to section 501(c) of the Internal Revenue Code; and,

(ii) Which has its principal place of business in the United States; and,

(iii) A majority of its officers and a majority of its Board of Directors or other body vested with its management are citizens of the United States; or,

(5) An accredited college, university or other institution of higher education created or organized under the laws of the United States, or of a State, including a county, municipality or other political subdivision thereof, the District of Columbia, or of a territory or possession of the United States; or,

(6) An agency of the United States, or of a State, the District of Columbia, or a territory or possession of the United States.

\* \* \* \* \*



Dated: February 22, 1991.

Alberto J. Mora,  
General Counsel.

[FR Doc. 91-4841 Filed 2-28-91; 8:45 am]

BILLING CODE 2230-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD1 91-003]

#### Temporary Drawbridge Operation Regulations; Saugatuck River, Connecticut

AGENCY: Coast Guard, DOT.

ACTION: Final temporary rule.

**SUMMARY:** At the request of Metro-North Commuter Railroad (Metro-North), the Coast Guard is adding temporary regulations governing the US Route 1 drawbridge over Saugatuck River, at mile 1.1, at Westport, Connecticut to provide that the draw need not be opened for the passage of vessels for 45 days from February 15 through March 31, 1991. This temporary regulation is being considered to facilitate the rehabilitation of the north leaf of the bridge before the boating season. This action will relieve the bridge owner of the burden of having to open the draw during the rehabilitation of the bridge and will only permit the transit of marine traffic which can pass under the closed span.

**EFFECTIVE DATES:** This temporary regulation becomes effective on February 15, 1991 and will terminate on March 31, 1991.

**FOR FURTHER INFORMATION CONTACT:** William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

**SUPPLEMENTARY INFORMATION:** On February 1, 1991, the Coast Guard published a proposed temporary rule (56 FR 4023) concerning this amendment. The Commander, First Coast Guard District, also published the proposal as Public Notice 1-730 dated January 22, 1991. In each notice, interested persons were given until February 10, 1991 to submit comments. The Coast Guard received no comments or objections in response to this notice.

#### Drafting Information

The drafters of these regulations are Waverly W. Gregory, Jr., project officer, and Lieutenant John Gately, Project Attorney.

#### Discussion of Comments

No comments or objections were received to the public notice. No changes have been made in the final rule. The temporary regulations will suspend a portion of the existing regulations and allow the bridge to remain in the closed position from 7 a.m. on February 15 through 11 p.m. on March 31, 1991. Metro-North has the contractor and all equipment ready to facilitate structural repairs to the north span upon closure.

#### Economic Assessment and Certification

These temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulations, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This is based upon the fact that the closure will be accomplished outside the peak boating season when recreational boats are out of the water. The regulation also will not prevent the passage of vessels who are able to pass under the closed span. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

#### Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that it does not warrant the preparation of a federalism assessment.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Temporary Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1461; 33 CFR 1.05-1(g).

2. Section 117.221(b) (1) and (2) are suspended for a 45 day period and (b) (3) is added for the same 45 day period from 15 February through 31 March 1991 to read as follows: Because this is a temporary rule, this paragraph will not be codified in the Code of Federal Regulations.

#### § 117.221 Saugatuck River.

(b) \* \* \*

(3) *Repair of the SAGA bridge.* The draw need not be opened for the passage of any vessel and paragraphs (b) (1) and (2) are suspended from 7 a.m. on February 15 through 11 p.m. on March 31, 1991, inclusive, to effect major repairs to the north bridge leaf.

Dated: February 21, 1991.

P.L. Collom,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 91-4892 Filed 2-28-91; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### 45 CFR Part 74

RIN 0991-AA29

#### Administration of Grants; Audits of Institutions of Higher Education and Other Nonprofit Organizations, Implementation of OMB Circular A-133

AGENCY: Department of Health and Human Services (HHS).

ACTION: Interim final rule with request for comments.

**SUMMARY:** These amendments to 45 CFR part 74 implement, for HHS, Office of Management and Budget (OMB) Circular A-133 by requiring institutions of higher education and other nonprofit organizations to comply with the requirements of the Circular. The Circular provides Government-wide policy and standards for non-Federal, organization-wide audits of recipients of Federal awards. The Circular and these amendments replace the audit requirements of OMB Circular A-110. In addition, the Department offers interested parties an opportunity to comment on a definition, contained in the amendments, of the concept of affiliation between a hospital and an institution of higher education. This definition is important because the Circular applies to hospitals which are affiliated with institutions of higher education, but exempts all other hospitals. The Circular, however, does not define "affiliated." Consequently, a definition of this term is included in the amendments to assure consistent implementation.

**DATES:** Interim rule effective March 1, 1991. Comments on the definition of



"affiliated" must be received by April 30, 1991.

**ADDRESSES:** Comments on the definition of "affiliated" should be addressed to Edward M. Tracy, Director, Division of Cost Determination Management, Department of Health and Human Services, room 513D HHH Building, 200 Independence Avenue, SW., Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** John Strauch (202) 245-7840.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 74.62(b) of 45 CFR part 74 currently requires nongovernmental recipients of Federal awards to comply with the audit requirements of OMB Circular A-110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." That Circular requires these organizations to obtain organization-wide audits of their activities by independent non-Federal auditors at least once every two years.

On November 10, 1988, OMB published a proposed Circular A-133 for public comment in the Federal Register, at 53 FR 45744-45748. The new Circular proposed to replace the audit requirements of Circular A-110 with a more comprehensive set of audit policies and procedures for institutions of higher education and other nonprofit organizations.

After considering the comments received, OMB issued the Circular in final form on March 8, 1990. OMB also published the Circular in the Federal Register on March 16, 1990 at 55 FR 10019-10025. The Circular supersedes the audit requirements in Attachment F of Circular A-110 which are referenced in 45 CFR 74.62(b).

Circular A-133 applies to recipient fiscal years that begin on or after January 1, 1990. The Circular applies to all nonprofit organizations which receive Federal awards except (a) Hospitals which are not affiliated with an institution of higher education, (b) State, local and Indian Tribal governments covered by Circular A-128 and (c) those public institutions of higher education which are audited as part of a single audit of a State or local government under Circular A-128. Audits are usually to be performed annually but not less frequently than every two years.

The Circular divides organizations into three categories, as follows:

1. Organizations which receive \$100,000 or more a year in Federal awards must have an audit made in accordance with the provisions

of the Circular, except that an organization which receives awards only under one Federal program may choose instead to have an audit performed of that program.

2. Organizations receiving at least \$25,000 but less than \$100,000 in Federal awards a year may choose to have an audit made in accordance with the provisions of the Circular or to have an audit made of each Federal award in accordance with the Federal laws and regulations governing the programs in which they participate.

3. Organizations receiving less than \$25,000 a year in Federal awards are exempt from Federal audit requirements but their records must be available for review by the Federal grantor agency or the subgranting entity.

For purposes of the foregoing, the term "award" means financial assistance as well as cost-type contracts used to buy services or goods for the use of the Federal Government. It includes awards received directly from the Federal agencies or indirectly through other recipients.

**Submission of Audit Reports**

The Circular requires audit reports to be submitted in accordance with the reporting standards for financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States. To minimize the burden on HHS recipients, these amendments specify that copies of the reports for HHS are to be submitted only to the responsible Regional Inspector General for Audit Services. These officials will distribute copies as appropriate within the Department.

**Affiliated Institutions**

OMB exempted hospitals not affiliated with institutions of higher education because such hospitals receive most of their Federal reimbursements from the Medicare and Medicaid programs which have their own audit mechanisms. The amount of research and training awards received by non-affiliated hospitals were deemed by OMB not to be significant enough to justify an additional audit at these hospitals. However, OMB did not provide a definition of the term "affiliated." We discussed this issue with OMB and were advised that the term should be interpreted broadly enough to assure audit coverage of significant amounts of Federal research and training funds.

Therefore, in order to assure consistent application of this aspect of the Circular and to ensure that significant amounts of research and training funds are audited, an appropriate definition of "affiliated" is included in this regulation. Under that definition, the existence of an affiliation would include those situations where a

formal affiliation exists by virtue of ownership or a formal affiliation agreement. It would also include de facto affiliations where the Federally-supported research or training activities of one organization make use of the facilities or staff of the other. We have been advised by OMB that this definition is consistent with their intent.

Because only the definition of "affiliated" has not previously been made available for public comment by OMB, we are providing the public an opportunity to comment on the definition. However, since this definition is interpretative and we have been advised by OMB that our definition is consistent with the intent of the Circular, we do not believe that this should delay final issuance of the amendments. We are therefore issuing these amendments as an interim final rule, making them effective immediately but inviting public comment on the definition of "affiliated." If persuasive comments are received, we will modify the definition as soon as possible to avoid any hardship to affected parties.

**Changes to 45 CFR Part 74**

HHS is amending § 74.62 as follows:

1. Footnote 1 to paragraphs (a) and (b) is deleted. This footnote described in general terms the audit requirements of OMB Circulars A-102 and A-110. Since these Circulars only apply to earlier periods and will soon have no applicability, the footnote is not longer necessary.

2. Subparagraph (a)(3) is renumbered and reordered as paragraph (c) and expanded to apply to Circular A-133 as well as Circular A-128 since the requirements concerning submission of audit reports now also apply to nongovernmental organizations. An editorial change recognizes the current title of the HHS Regional Inspector General for Audit Services and a new footnote is added explaining that the responsibilities for processing non-Federal audit reports is in the process of being incrementally transferred to the Kansas City Office.

3. The existing text of paragraph (b) is being renumbered subparagraph (b)(1) and its applicability is limited to fiscal periods beginning prior to January 1, 1990, the effective date of Circular A-133.

4. Subparagraph (b)(2) is added requiring all nongovernmental recipients to comply with Circular A-133, including any future amendments published in the Federal Register by OMB.

5. Subparagraph (b)(3) is added to define the term "affiliated" for purposes of determining which hospitals are and



are not exempted from coverage by Circular A-133. The definition includes all situations where: (a) Either a hospital or an institution of higher education has an ownership interest in the other entity or some other party (other than a State or local unit of government) has an ownership interest in each of them; (b) an affiliation agreement exists; or (c) Federal research or training awards to a hospital or educational institution are performed in the facilities of, or involve the staff of, the other entity.

6. OMB Circular A-133 is included verbatim as Appendix I to part 74.

#### Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a major rule because it will not have an annual impact on the economy of \$100 million or more, result in a major increase in costs or prices for consumers, any industries, any governmental agencies or any geographic regions, or otherwise meet the thresholds of the Executive Order.

#### Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (Pub. L. 96-354) which requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities, the Secretary certifies that this rule has no significant effect on a substantial number of small entities. Therefore a regulatory flexibility analysis is not included.

#### Paperwork Reduction Act

HHS was requested by OMB to serve as the lead agency on behalf of OMB and all of the Federal agencies that will be implementing Circular A-133 for the purpose of processing the request for approval under the Paperwork Reduction Act. The request was reviewed and approved by the OMB Office of Information and Regulatory Affairs with OMB Control Number 0991-0003.

#### Waiver of Notice of Proposed Rule Making

The definition of "affiliated" is interpretive of that word as used in OMB Circular A-133, but not defined there. Accordingly, we conclude that the portion of this regulation containing the definition of "affiliated" is an interpretive rule for which notice and comment is not legally required. At the same time, however, we are inviting parties to comment on this definition, so that we may have the full benefit of public participation. If persuasive

comments on this term are received, we will modify this definition.

This regulation is being published in interim final form with an immediate effective date. We are disposing with prior notice and comment procedures because we believe there is good cause to do so. Specifically, we find that publication of this regulation in proposed form is unnecessary for the following reasons:

1. Except for the definition of "affiliated", on which we are inviting comments, public comments on the Circular have been sought and considered by OMB in developing the Circular. The Department has no discretion to change the Circular's requirements or its effective date.
2. Current regulations already require the performance of organization-wide audits. A delay in implementing the Circular would delay the improvements in these audits that are likely to accrue from the improved guidance in the Circular. It would also require certain smaller organizations to continue to comply with the more restrictive requirements in the current regulations.

#### List of Subjects in 45 CFR Part 74

Accounting, Administrative practice and procedures, Grant programs—health, Grant programs—social programs, Grants administration.

Accordingly, 45 CFR part 74 is amended to read as follows:

Dated: December 31, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

#### PART 74—ADMINISTRATION OF GRANTS

1. The authority citation for part 74 continues to read as follows:

Authority: 5 U.S.C. 301; § 74.62(a) and appendix J also issued under section 7505, P.L. 98-502, 98 Stat. 2333 (31 U.S.C. 7505).

2. Section 74.62 is revised to read as follows:

##### § 74.62 Non-Federal Audits.

(a) *Governmental recipients*—(1) Fiscal periods of recipients beginning before January 1, 1985. Recipients that are governments shall comply with the requirements concerning non-Federal audits in Attachment P to OMB Circular A-102 (October 1979) (see appendix G to part 74).

(2) *Fiscal periods of recipients beginning on or after January 1, 1985.* Recipients that are governments shall comply with OMB Circular A-128. The Circular is codified verbatim in appendix J to this part.

(b) *All other recipients.*—*Fiscal periods of recipients beginning before January 1, 1990.* Recipients that are not governments shall comply with the requirements concerning non-Federal

audits in OMB Circular No. A-110 (see appendix H to part 74).

(2) *Fiscal periods of recipients beginning on or after January 1, 1990.* Recipients that are not governments shall comply with OMB Circular A-133. The Circular is codified verbatim in appendix I to this part.

(3) *Hospitals.* OMB Circular A-133 exempts hospitals not affiliated with an institution of higher education. In determining whether or not this exemption applies, the term "affiliated" shall include all situations where:

(i) Either a hospital or an institution of higher education has an ownership interest in the other entity or some other party (other than a State or local unit of government) has an ownership interest in each of them;

(ii) An affiliation agreement exists; or

(iii) Federal research or training awards to a hospital or institution of higher education are performed in whole or in part in the facilities of, or involve the staff of, the other entity.

(c) *Submission of audit reports.* All copies of audit reports that a recipient is required under OMB Circular A-128 or A-133 to submit to HHS shall be addressed to the HHS Regional Inspector General for Audit Services responsible for the HHS region in which the recipient is located. The HHS Office of Inspector General will distribute copies as appropriate within the Department. Recipients, therefore, are not required to send their audit reports to any HHS officials other than the responsible Regional Inspector General for Audit Services.<sup>1</sup>

3. By adding appendix I to part 74 to read as follows:

#### OMB Circular NO-133 Audits of Institutions of Higher Education and Other Nonprofit Institutions

OMB Circular No. A-133

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Audits of Institutions of Higher Education and Other Nonprofit Institutions

1. *Purpose.* Circular A-133 establishes audit requirements and defines Federal responsibilities for implementing and monitoring such requirements for institutions of higher education and other nonprofit institutions receiving Federal awards.

<sup>1</sup> The Office of Inspector General is in the process of transferring this responsibility for recipients located in all regions to its Kansas City Office. Recipients in the New York, Philadelphia and Denver Regions should submit their reports to the Regional Inspector General for Audit Services, Kansas City, MO. Recipients in other regions will be advised directly by the Office of Audit Services when responsibility for their region is to be transferred.



2. **Authority.** Circular A-133 is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970; and Executive Order No. 11541.

4. **Supersession.** Circular A-133 supersedes Attachment F, subparagraph 2h, of Circular A-110, "Uniform Administrative Requirements for Grants and other Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations."

4. **Applicability.** The provisions of Circular A-133 apply to:

a. Federal departments and agencies responsible for administering programs that involve grants, cost-type contracts and other agreements with institutions of higher education and other nonprofit recipients.

b. Nonprofit institutions, whether they are recipients, receiving awards directly from Federal agencies, or are sub-recipients, receiving awards indirectly through other recipients.

These principles, to the extent permitted by law, constitute guidance to be applied by agencies consistent with and within the discretion, conferred by the statutes governing agency action.

#### 5. Requirements and Responsibilities.

The specific requirements and responsibilities of Federal departments and agencies and institutions of higher education and other nonprofit institutions are set forth in the attachment.

6. **Effective Date.** The provisions of Circular A-133 are effective upon publication and shall apply to audits of nonprofit institutions for fiscal years that begin on or after January 1, 1990. Earlier implementation is encouraged. However, until this Circular is implemented, the audit provisions of Attachment F to Circular A-110 shall continue to be observed.

7. **Policy Review (Sunset) Date.** Circular A-133 will have a policy review three years from the date of issuance.

8. **Inquiries.** Further information concerning Circular A-133 may be obtained by contacting the Financial Management Division, Office of Management and Budget, Washington, DC 20503, telephone (202) 395-3993.

Richard G. Darman,  
Director.

#### OMB Circular A-133

#### Audits of Institutions of Higher Education and Other Nonprofit Institutions

1. **Definitions.** For the purposes of this Circular, the following definitions apply:

a. "Award" means financial assistance, and Federal cost-type contracts used to buy services or goods for the use of the Federal Government. It includes awards received directly from the Federal agencies or indirectly through recipients. It does not include procurement contracts to vendors under grants or contracts, used to buy goods or services. Audits of such vendors shall be covered by the terms and conditions of the contract.

b. "Cognizant agency" means the Federal agency assigned by the Office of

Management and Budget to carry out the responsibilities described in paragraph 3 of this Attachment.

c. "Coordinated audit approach" means an audit wherein the independent auditor, and other Federal and non-Federal auditors consider each other's work, in determining the nature, timing, and extent of his or her own auditing procedures. A coordinated audit must be conducted in accordance with *Government Auditing Standards* and meet the objectives and reporting requirements set forth in paragraph 12(b) and 15, respectively, of this Attachment. The objective of the coordinated audit approach is to minimize duplication of audit effort, but not to limit the scope of the audit work so as to preclude the independent auditor from meeting the objectives set forth in paragraph 12(b) or issuing the reports required in paragraph 15 in a timely manner.

d. "Federal agency" has the same meaning as the term "agency" in section 551(1) of title 5, United States Code.

e. "Federal Financial Assistance."

(1) "Federal financial assistance" means assistance provided by a Federal agency to a recipient or sub-recipient to carry out a program. Such assistance may be in the form of:

- Grants;
- Contracts;
- Cooperative agreements;
- Loans;
- Loan guarantees;
- Property;
- Interest subsidies;
- Insurance;
- Direct appropriations;
- Other non-cash assistance.

(2) Such assistance does not include direct Federal cash assistance to individuals.

(3) Such assistance includes awards received directly from Federal agencies, or indirectly when sub-recipients receive funds identified as Federal funds by recipients.

(4) The granting agency is responsible for identifying the source of funds awarded to recipients; the recipient is responsible for identifying the source of funds awarded to sub-recipients.

f. "Generally accepted accounting principles" has the meaning specified in the *Government Auditing Standards*.

g. "Independent auditor" means:

(1) A Federal, State, or local government auditor who meets the standards specified in the *Government Auditing Standards*; or

(2) A public accountant who meets such standards.

h. "Internal control structure" means the policies and procedures established to provide reasonable assurance that:

- (1) Resource use is consistent with laws, regulations, and award terms;
- (2) Resources are safeguarded against waste, loss, and misuse; and
- (3) Reliable data are obtained, maintained, and fairly disclosed in reports.

i. "Major program" means an individual award or a number of awards in a category of Federal assistance or support for which total expenditures are the larger of three percent of total Federal funds expended or \$100,000, on which the auditor will be required to express an opinion as to whether the major program

is being administered in compliance with laws and regulations.

Each of the following categories of Federal awards shall constitute a major program where total expenditures are the larger of three percent of total Federal funds expended or \$100,000:

- Research and Development.
- Student Financial Aid.
- Individual awards not in the student aid or research and development category.

j. "Management decision" means the evaluation by the management of an establishment of the findings and recommendations included in an audit report and the issuance of a final decision by management concerning its response to such findings and recommendations, including actions concluded to be necessary.

k. "Nonprofit institution" means any corporation, trust, association, cooperative or other organization which (1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (2) is not organized primarily for profit; and (3) uses its net proceeds to maintain, improve, and/or expand its operations. The term "nonprofit institutions" includes institutions of higher education, except those institutions that are audited as part of single audits in accordance with Circular A-128 "Audits of State and Local Governments." The term does not include hospitals which are not affiliated with an institution of higher education, or State and local governments and Indian tribes covered by Circular A-128 "Audits of State and Local Governments."

l. "Oversight" agency means the Federal agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency, unless no direct funding is received. Where there is no direct funding, the Federal agency with the predominant indirect funding will assume the general oversight responsibilities. The duties of the oversight agency are described in paragraph 4 of this Attachment.

m. "Recipient" means an organization receiving financial assistance to carry out a program directly from Federal agencies.

n. "Research and development" includes all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other nonprofit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

o. "Student Financial Aid" includes those programs of general student assistance in which institutions participate, such as those authorized by Title IV of the Higher Education Act of 1965 which is administered by the U.S. Department of Education and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar awards to



students on a competitive basis, or for specified studies or research.

p. "Sub-recipient" means any person or government department, agency, establishment, or nonprofit organization that receives financial assistance to carry out a program through a primary recipient or other sub-recipient, but does not include an individual that is a beneficiary of such a program. A sub-recipient may also be a direct recipient of Federal awards under other agreements.

q. "Vendor" means an organization providing a recipient or sub-recipient with generally required goods or services that are related to the administrative support of the Federal assistance program.

## 2. Audit of Nonprofit Institutions.

### a. Requirements based on awards received.

(1) Nonprofit institutions that receive \$100,000 or more a year in Federal awards shall have an audit made in accordance with the provisions of this Circular. However, nonprofit institutions receiving \$100,000 or more but receiving awards under only one program have the option of having an audit of their institution prepared in accordance with the provisions of the Circular or having an audit made of the one program. For prior or subsequent years, when an institution has only loan guarantees or outstanding loans that were made previously, the institution may be required to conduct audits for those programs, in accordance with regulations of the Federal agencies providing those guarantees or loans.

(2) Nonprofit institutions that receive at least \$25,000 but less than \$100,000 a year in Federal awards shall have an audit made in accordance with this Circular or have an audit made of each Federal award, in accordance with Federal laws and regulations governing the programs in which they participate.

(3) Nonprofit institutions receiving less than \$25,000 a year in Federal awards are exempt from Federal audit requirements, but records must be available for review by appropriate officials of the Federal grantor agency or subgranting entity.

b. Oversight by Federal agencies. (1) To each of the larger nonprofit institutions the Office of Management and Budget (OMB) will assign a Federal agency as the cognizant agency for monitoring audits and ensuring the resolution of audit findings that affect the programs of more than one agency.

(2) Smaller institutions not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them with the most funds.

(3) Assignments to Federal cognizant agencies for carrying out responsibilities in this section are set forth in a separate supplement to this Circular.

(4) Federal Government-owned, contractor-operated facilities at institutions or laboratories operated primarily for the Government are not included in the cognizance assignments. These will remain the responsibility of the contracting agencies. The listed assignments cover all of the functions in this Circular unless otherwise indicated. The Office of Management and Budget will coordinate changes in agency assignments.

## 3. Cognizant Agency Responsibilities. A cognizant agency shall:

a. Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

b. Provide technical advice and liaison to institutions and independent auditors.

c. Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

d. Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. A cognizant agency should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

e. Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

f. Coordinate, to the extent practicable, audits or reviews made for Federal agencies that are in addition to the audits made pursuant to this Circular, so that the additional audits or reviews build upon audits performed in accordance with the Circular.

g. Ensure the resolution of audit findings that affect the programs of more than one agency.

h. Seek the views of other interested agencies before completing a coordinated program.

i. Help coordinate the audit work and reporting responsibilities among independent public accountants, State auditors, and both resident and non-resident Federal auditors to achieve the most cost-effective audit.

4. Oversight agency responsibilities. An oversight agency shall provide technical advice and counsel to institutions and independent auditors when requested by the recipient. The oversight agency may assume all or some of the responsibilities normally performed by a cognizant agency.

5. Recipient responsibilities. A recipient that receives a Federal award and provides \$25,000 or more of it during its fiscal year to a sub-recipient shall:

a. Ensure that the nonprofit institution sub-recipients that receive \$25,000 or more have met the audit requirements of this Circular, and that sub-recipients subject to OMB Circular A-128 have met the audit requirements of that Circular;

b. Ensure that appropriate corrective action is taken within six months after receipt of the sub-recipient audit report in instances of noncompliance with Federal laws and regulations;

c. Consider whether sub-recipient audits necessitate adjustment of the recipient's own records; and

d. Require each sub-recipient to permit independent auditors to have access to the records and financial statements as necessary for the recipient to comply with this Circular.

## 6. Relation to Other Audit Requirements.

a. An audit made in accordance with this Circular shall be in lieu of any financial audit required under individual Federal awards. To the extent that an audit made in accordance with this Circular provides Federal agencies with the information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits or reviews necessary to carry out responsibilities under Federal law and regulation. Any additional Federal audits or reviews shall be planned and carried out in such a way as to build upon work performed by the independent auditor.

b. Audit planning by Federal audit agencies should consider the extent to which reliance can be placed upon work performed by other auditors. Such auditors include State, local, Federal, and other independent auditors, and a recipient's internal auditors. Reliance placed upon the work of other auditors should be documented and in accordance with *Government Auditing Standards*.

c. The provisions of this Circular do not limit the authority of Federal agencies to make or contract for audits and evaluations of Federal awards, nor do they limit the authority of any Federal agency Inspector General or other Federal official.

d. The provisions of this Circular do not authorize any institution or sub-recipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits, evaluations or reviews.

e. A Federal agency that makes or contracts for audits, in addition to the audits made by recipients pursuant to this Circular, shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits or reviews include financial, performance audits and program evaluations.

7. Frequency of audit. Audits shall usually be performed annually but not less frequently than every two years.

8. Sanctions. No audit costs may be charged to Federal awards when audits required by this Circular have not been made or have been made but not in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit in accordance with the Circular, Federal agencies must consider appropriate sanctions including:

- Withholding a percentage of awards until the audit is completed satisfactorily;
- Withholding or disallowing overhead costs; or
- Suspending Federal awards until the audit is made.

9. Audit costs. The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of Circular A-21, "Cost Principles for



Universities" or Circular A-122, "Cost Principles for Nonprofit Organizations," FAR subpart 31, or other applicable cost principles or regulations.

10. *Auditor selection.* In arranging for audit services institutions shall follow the procurement standards prescribed by Circular A-110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations."

11. *Small and Minority Audit Firms.*

a. Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular.

b. Recipients of Federal awards shall take the following steps to further this goal:

(1) Ensure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable;

(2) Make information on forthcoming opportunities available and arrange timeframes for the audit to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals;

(3) Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals;

(4) Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs, and in cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities;

(5) Encourage contracting with consortiums of small audit firms as described in section (1), above, when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals; and

(6) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

12. *Scope of Audit and Audit Objectives.* a. The audit shall be made by an independent auditor in accordance with *Government Auditing Standards* developed by the Comptroller General of the United States covering financial audits. An audit under this Circular should be an organization-wide audit of the institution. However, there may be instances where Federal auditors are performing audits or are planning to perform audits at nonprofit institutions. In these cases, to minimize duplication of audit work, a coordinated audit approach may be agreed upon between the independent auditor, the recipient and the cognizant agency or the oversight agency. Those auditors who assume responsibility for any or all of the reports called for by paragraph 15 should follow

guidance set forth in *Government Auditing Standards* in using work performed by others.

b. The auditor shall determine whether:

(1) The financial statements of the institution present fairly its financial position and the results of its operations in accordance with generally accepted accounting principles;

(2) The institution has an internal control structure to provide reasonable assurance that the institution is managing Federal awards in compliance with applicable laws and regulations, and controls that ensure compliance with the laws and regulations that could have a material impact on the financial statements; and

(3) The institution has complied with laws and regulations that may have a direct and material effect on its financial statement amounts and on each major Federal program.

13. *Internal Controls Over Federal Awards; Compliance Reviews.* a. *General.*

The independent auditor shall determine and report on whether the recipient has an internal control structure to provide reasonable assurance that it is managing Federal awards in compliance with applicable laws, regulations, and contract terms, and that it safeguards Federal funds. In performing these reviews, independent auditors should rely upon work performed by a recipient's internal auditors to the maximum extent possible. The extent of such reliance should be based upon the *Government Auditing Standards*.

b. *Internal control review.* (1) In order to provide this assurance on internal controls, the auditor must obtain an understanding of the internal control structure and assess levels of internal control risk. After obtaining an understanding of the controls, the assessment must be made whether or not the auditor intends to place reliance on the internal control structure.

(2) As part of this review, the auditor shall:

(a) Perform tests of controls to evaluate the effectiveness of the design and operation of the policies and procedures in preventing or detecting material noncompliance. Tests of controls will not be required for those areas where the internal control structure policies and procedures are likely to be ineffective in preventing or detecting noncompliance, in which case a reportable condition or a material weakness should be reported in accordance with paragraph 15c(2) of this Circular.

(b) Review the recipient's system for monitoring sub-recipients and obtaining and acting on sub-recipient audit reports.

(c) Determine whether controls are in effect to ensure direct and indirect costs were computed and billed in accordance with the guidance provided in the general requirements section of the compliance supplement to this Circular.

c. *Compliance review.* (1) The auditor shall determine whether the recipient has complied with laws and regulations that may have a direct and material effect on any of its major Federal programs. In addition, transactions selected for non-major programs shall be tested for compliance with Federal laws and regulations that apply to such transactions.

(2) In order to determine which major programs are to be tested for compliance,

recipients shall identify, in their accounts, all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies, through other State and local governments or other recipients. To assist recipients in identifying Federal awards, Federal agencies and primary recipients shall provide the *Catalog of Federal Domestic Assistance (CFDA)* numbers to the recipients when making the awards.

(3) The review must include the selection of an adequate number of transactions from each major Federal financial assistance program so that the auditor obtains sufficient evidence to support the opinion on compliance required by paragraph 15c(3) of this Attachment. The selection and testing of transactions shall be based on the auditors' professional judgment considering such factors as the amount of expenditures for the program; the newness of the program or changes in its conditions; prior experience with the program particularly as revealed in audits and other evaluations (e.g., inspections, program reviews, or system reviews required by Federal Acquisition Regulations); the extent to which the program is carried out through sub-recipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(4) In making the test of transactions, the auditor shall determine whether:

- The amounts reported as expenditures were for allowable services, and
- The records show that those who received services or benefits were eligible to receive them.

(5) In addition to transaction testing, the auditor shall determine whether:

- Matching requirements, levels of effort and earmarking limitations were met,
- Federal financial reports and claims for advances and reimbursement contain information that is supported by books and records from which the basic financial statements have been prepared, and
- Amounts claimed or used for matching were determined in accordance with (1) OMB Circular A-21, "Cost Principles for Educational Institutions"; (2) matching or cost sharing requirements in Circular A-110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations"; (3) Circular A-122, "Cost Principles for Nonprofit Organizations"; (4) FAR subpart 31 cost principles; and (5) other applicable cost principles or regulations.

(6) The principal compliance requirements of the largest Federal programs may be ascertained by referring to the *Compliance Supplement for Single Audits of Educational Institutions and Other Nonprofit Organizations*, and the *Compliance*



*Supplement for Single Audits of State and Local Governments*," issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplements, the auditor should ascertain compliance requirements by reviewing the statutes, regulations, and agreements governing individual programs.

(7) Transactions related to other awards that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

14. *Illegal Acts.* If, during or in connection with the audit of a nonprofit institution, the auditor becomes aware of illegal acts, such acts shall be reported in accordance with the provisions of the *Government Auditing Standards*.

15. *Audit Reports.* a. Audit reports must be prepared at the completion of the audit.

b. The audit report shall state that the audit was made in accordance with the provisions of this Circular.

c. The report shall be made up of at least the following three parts:

(1) The financial statements and a schedule of Federal awards and the auditor's report on the statements and the schedule. The schedule of Federal awards should identify major programs and show the total expenditures for each program. Individual major programs other than Research and Development and Student Aid should be listed by catalog number as identified in the *Catalog of Federal Domestic Assistance*. Expenditures for Federal programs other than major programs shall be shown under the caption "other Federal assistance." Also, the value of non-cash assistance such as loan guarantees, food commodities or donated surplus properties or the outstanding balance of loans should be disclosed in the schedule.

(2) A written report of the independent auditor's understanding of the internal control structure and the assessment of control risk. The auditor's report should include as a minimum: (1) The scope of the work in obtaining understanding of the internal control structure and in assessing the control risk; (2) the nonprofit institution's significant internal controls or control structure including the controls established to ensure compliance with laws and regulations that have a material impact on the financial statements and those that provide reasonable assurance that Federal awards are being managed in compliance with applicable laws and regulations; and (3) the reportable conditions, including the identification of material weaknesses, identified as a result of the auditor's work in understanding and assessing the control risk. If the auditor limits his/her consideration of the internal control structure for any reason, the circumstances should be disclosed in the report.

(3) The auditor's report on compliance containing:

—An opinion as to whether each major Federal program was being administered in compliance with laws and regulations applicable to the matters described in paragraph 13(c)(3) of this Attachment, including compliance with laws and regulations pertaining to financial reports

and claims for advances and reimbursements;

—A statement of positive assurance on those items that were tested for compliance and negative assurance on those items not tested;

—Material findings of noncompliance presented in their proper perspective:

- The size of the universe in number of items and dollars,
- The number and dollar amount of transactions tested by the auditors,
- The number and corresponding dollar amount of instances of noncompliance;

—Where findings are specific to a particular Federal award, an identification of total amounts questioned, if any, for each Federal award, as a result of noncompliance and the auditor's recommendations for necessary corrective action.

c. The three parts of the audit report may be bound into a single document, or presented at the same time as separate documents.

d. Nonmaterial findings need not be disclosed with the compliance report but should be reported in writing to the recipient in a separate communication. The recipient, in turn, should forward the findings to the Federal grantor agencies or subgrantor sources.

e. All fraud or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, may be covered in a separate written report submitted in accordance with the *Government Auditing Standards*.

f. The auditor's report should disclose the status of known but uncorrected significant material findings and recommendations from prior audits that affect the current audit objective as specified in the *Government Auditing Standards*.

g. In addition to the audit report, the recipient shall provide a report of its comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

h. Copies of the audit report shall be submitted in accordance with the reporting standards for financial audits contained in the *Government Auditing Standards*. Sub-recipient auditors shall submit copies to recipients that provided Federal awards. The report shall be due within 30 days after the completion of the audit, but the audit should be completed and the report submitted not later than 13 months after the end of the recipient's fiscal year unless a longer period is agreed to with the cognizant or oversight agency.

i. Recipients of more than \$100,000 in Federal awards shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audit reports on file.

j. Recipients shall keep audit reports, including sub-recipient reports, on file for three years from their issuance.

16. *Audit resolution.* a. As provided in paragraph 3, the cognizant agency shall be responsible for ensuring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and the agency. Alternate arrangements may be made on case-by-case basis by agreement among the agencies concerned.

b. A management decision shall be made within six months after receipt of the report by the Federal agencies responsible for audit resolution. Corrective action should proceed as rapidly as possible.

17. *Audit Workpapers and Reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

[FR Doc. 91-4414 Filed 2-28-91; 8:45 am]

BILLING CODE 4150-04-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1803, 1804, 1805, 1806, 1814, 1815, 1819, 1836, 1849, 1852, and 1853

[NASA FAR Supplement Directive 89-6]

RIN 2700-AD11

### Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

**SUMMARY:** This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal or administrative matters. The major changes involve: (1) Procurement Integrity; (2) Competition Documentation; and (3) Field Pricing Support.

**EFFECTIVE DATE:** December 31, 1990.

**FOR FURTHER INFORMATION CONTACT:** David K. Beck, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-8250.



**SUPPLEMENTARY INFORMATION:****Availability of NASA FAR Supplement**

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, either in whole or in part, directly by NASA.

**Impact**

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The regulations herein are in the exempted category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The regulation imposes no new burdens on the public within the ambit of the Paperwork Reduction Act, as implemented at 5 CFR part 1320, nor does it significantly alter any reporting or recordkeeping requirements currently approved under OMB control number 2700-0042.

**List of Subjects in 48 CFR Parts 1803, 1804, 1805, 1806, 1814, 1815, 1819, 1836, 1849, 1852, and 1853**

Government procurement.

S.J. Evans,

*Assistant Administrator for Procurement.*

1. The authority citation for 48 CFR parts 1803, 1804, 1805, 1806, 1814, 1815, 1819, 1836, 1849, 1852, and 1853 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

**PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

2. Part 1803 is amended by revising subpart 1803.1 to read as follows:

**Subpart 1803.1—Safeguards**

1803.101 Standards of conduct.

1803.101-1 General.

1803.101-2 Solicitation and acceptance of gratuities by Government personnel.

1803.104 Procurement integrity.

1803.104-4 Definitions.

1803.104-5 Disclosure, protection, and marking of proprietary and source selection information.

1803.104-8 Knowing violations, duty to inquire, and ethics advisory opinions.

1803.104-9 Certification requirements.

1803.104-11 Processing violations or possible violations.

1803.104-12 Ethics program training requirements.

**Subpart 1803.1—Safeguards**

**1803.101 Standards of conduct.**

**1803.101-1 General.**

(a) Federal statutes prohibit certain acts by Government personnel and special Government employees as defined in 18 U.S.C. 202 in relation to Government procurement. Among these statutes are (1) 18 U.S.C. 201, relating to bribes in order to secure a Government contract; (2) 18 U.S.C. 203, relating to compensation for services rendered in connection with any proceeding or claim in which the United States has an interest; (3) 18 U.S.C. 205, relating to acting as an agent or attorney for prosecuting any claim against the United States; (4) 18 U.S.C. 208, relating to transacting business as an officer or agent of the United States with firms of which the officer or agent, or a spouse, minor child, or partner, is an official or in which the officer or agent has a pecuniary interest; and (5) 18 U.S.C. 209, relating to compensation from non-Government sources in connection with Government services.

(b) The statutory prohibitions and their application to NASA personnel are discussed in NHB 1900.1, Standards of Conduct for NASA Employees, and NHB 1900.2, Standards of Conduct for NASA Special Government Employees. All NASA personnel involved in procurement actions shall become familiar with these statutory prohibitions. Any questions concerning them shall be referred to legal counsel. In addition to criminal penalties, the statutes provide that transactions entered into in violation of these prohibitions are voidable (18 U.S.C. 218). (See subpart 18-3.70 for policy on contracting with former NASA employees.)

**1803.101-2 Solicitation and acceptance of gratuities by Government personnel.**

Any suspected violations shall be reported promptly to the installation's Office of Inspector General. (See Standards of Conduct for NASA Employees, NHB 1900.1.)

**1803.104 Procurement integrity.**

**1803.104-4 Definitions.**

*Designated agency ethics official* means for Headquarters, the General Counsel, and the Associate General Counsel for General Law, and for each center, the Chief Counsel.

**1803.104-5 Disclosure, protection, and marking of proprietary and source selection information.**

(a) The originator of information that may be source selection information

shall consult with the contracting officer or the procurement officer, who shall determine whether the information is source selection information. NASA personnel responsible for preparing material described in FAR 3.104-4(k)(2)(i) through (ix) shall assure that the material is marked with the legend in FAR 3.104-5(c) at the time the material is prepared.

(b) Unless marked with the legend "SOURCE SELECTION INFORMATION—SEE FAR 3.104," draft specifications, purchase descriptions, and statements of work are not considered source selection information when released during a market survey in order to determine the capabilities of potential competitive sources (see FAR subpart 7.1). If marked with the legend, they may be released during a market survey as authorized by the contracting officer after removal of the legend. Draft documents, after having been released, must remain available to the public until the conclusion of the procurement.

(c) Government employees serving in the following positions are authorized access to proprietary or source selection information for the particular procurements for which they have responsibility:

(1) Personnel participating in source evaluation board (SEB) procedures under 1815.613-71 and 1870.303, App. I.

(2) Personnel assigned to the contracting office.

(3) The initiator of the procurement request (to include the official having principal technical cognizance over the requirement).

(4) Small business specialists.

(5) Personnel assigned to counsel's office.

(6) Personnel who evaluate an offeror's or bidder's technical or cost proposal.

(7) Personnel assigned to the Defense Contract Audit Agency and contract administration offices of the Department of Defense.

(8) Personnel responsible for the review and approval of documents in accordance with the Master Buy Plan Procedure in subpart 1807.71.

(9) Other Government employees authorized by the contracting officer.

(10) Supervisors, at any level, of the personnel listed in subparagraphs (c) (1) through (9).

(d) Release of proprietary or source selection information to other than Government employees may be authorized in accordance with FAR 15.413-2, 1815.413, and 1815.413-2.

(e) For contracts and contract modifications over \$100,000, release of proprietary or source selection



information to another Government activity shall be made by a letter citing the obligation under FAR 3.104-5(d) to maintain a list of persons or classes of persons authorized access to proprietary or source selection information and to provide the list to the contracting officer for the contract file.

**1803.104-8 Knowing violations, duty to inquire, and ethics advisory opinions.**

When a contracting officer has not been appointed, questions regarding whether information was proprietary or source selection information shall be referred to the procurement officer (see FAR 3.104-8 (d) and (e)).

**1803.104-9 Certification requirements.**

The contracting officer shall obtain the following certification from any procurement official leaving the Government or transferring to another Government agency or any contractor employee serving as a procurement official who ceases performance of those duties during the conduct of a procurement expected to result in a contract or modification in excess of \$100,000 (see FAR 3.104-7(a)).

(Certification)

**Procurement Official Certification Upon Termination of Government Service**

I, [Name of procurement official], hereby certify that I understand the continuing obligation under Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) not to disclose proprietary or source selection information relating to any ongoing procurement for which I have served as a procurement official.

**Signature of Procurement Official and Date**

Identify applicable procurements (ones for which awards have not been made at the time of the Procurement Official's departure):  
[List procurements]

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

(End of certification)

**1803.104-11 Processing violations or possible violations.**

(a) The Procurement Officer is the individual designated to receive the contracting officer's report of violations in accordance with FAR 3.104-11.

(b) The head of the contracting activity (HCA) or designee shall refer all information describing an actual or possible violation to the installation's counsel and inspector general staff and to the Assistant Administrator for Procurement (Attn: Code HM).

(c) When the HCA or designee determines under FAR 3.104-11(f) that

award is justified by urgent and compelling circumstances or is otherwise in the interest of the Government, then that official shall submit a copy of the determination to the Assistant Administrator for Procurement (Attn: Code HP) simultaneous with transmittal to the Administrator.

**1803.104-12 Ethics program training requirements.**

Individuals who will serve as procurement officials shall complete either Optional Form 333 or the following certification (see FAR 3.104-12(a)). The Privacy Act Notice is intended for use when either the executed Optional Form 333 or the executed certification will be filed in the employee's official personnel file and a social security number is needed. When an individual's social security number is being requested, Centers may use the attached Privacy Act Notice or an appropriate alternative Privacy Act Notice. The Privacy Act Notice may be omitted if a social security number is not being requested.

(Certification)

**Procurement Integrity Certification for Procurement Officials**

As a condition of serving as a procurement official, I, [Name], hereby certify that I am familiar with the provisions of subsections 27 (b), (c), and (e) of the Office of Federal Procurement Policy Act (41 U.S.C. 423) as amended by section 814 of Public Law 101-189. I further certify that I will not engage in any conduct prohibited by such subsections and will report immediately to the contracting officer any information concerning a violation or possible violation of subsections 27 (a), (b), (d), or (f) of the Act and applicable implementing regulations. A written explanation of subsections 27 (a) through (f) has been made available to me. I understand that, should I leave the Government during the conduct of a procurement for which I have served as a procurement official, I have a continuing obligation under section 27 not to disclose proprietary or source selection information relating to the procurement and a requirement to so certify.

I understand that my execution of this certification does not make me a procurement official, nor will it be utilized to establish that I am a procurement official.

Signature and date

(End of certification)

(Notice)

Name

Social Security Number

**Privacy Act Notice to Employees and Officials**

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the following notice is provided:

**Authority for Collection of Information:** 41 U.S.C. 423 and Executive Order 9397.

Your signature on the Procurement Integrity Certification for Procurement Officials and disclosure of your Social Security Number are voluntary, but possible effects upon you if the certification is not signed and the Social Security Number is not provided include the following:

Disqualification from particular work or duty assignments, or from the position for which you have applied or which you currently hold, or other appropriate action, or administrative delay in processing your certification.

Principal purpose for collection of this information:

To obtain and maintain a completed certification from any person designated as a "Procurement Official," as defined by 41 U.S.C. 423 and applicable procurement regulations.

Routine uses which may be made of the collected information:

Transfers to Federal, state, local, or foreign agencies when relevant to civil, criminal, administrative, or regulatory investigations or proceedings, including transfer to the Office of Government Ethics in connection with its program oversight responsibilities, or pursuant to a request by any appropriate Federal agency in connection with hiring, retention, or grievance of an employee or applicant, the issuance of a security clearance, the award or administration of a contract, the issuance of a license, grant, or other benefit, to committees of the Congress, or any other use specified by the Office of Personnel Management (OPM) in the system of records entitled "OPM/GOVT-1, General Personnel Records," as published in the Federal Register periodically by OPM.

(End of Notice)

**PART 1804—ADMINISTRATIVE MATTERS**

3. Part 1804 is amended as set forth below:

**1804.470-2 [Amended]**

a. In section 1804.470-2, the word "viz." is removed, and the words "for example," are added in its place.

**1804.671-4 [Amended]**

b. In section 1804.671-4, paragraph (qqq), the sentence "For award-fee contracts, enter the base fee, the maximum available award fee." is revised to read "For award-fee contracts, enter the base fee plus the maximum available award fee."



**PART 1805—PUBLICIZING CONTRACT ACTIONS****1805.207 [Amended]**

4. In section 1805.207, paragraph (b), the phrase "R. Architect-Engineer Services." is revised to read "C. Architect-Engineer Services."

**PART 1806—COMPETITION REQUIREMENTS**

5. Sections 1806.302-4 and 1806.302-470 are added to read as set forth below:

**1806.302-4 International agreement.****1806.302-470 Documentation.**

Pursuant to 10 U.S.C. 2304(f)(2)(E), an individual justification for other than full and open competition under the authority of FAR 6.302-4 is not required when the procurement officer signs a Memorandum for the Record that:

(a) describes the specific terms of the international agreement or treaty that limit procurements in support of, or as a result of, the agreement or treaty to less than full and open competition;

(b) is reviewed and approved by the appropriate competition advocate in accordance with NFS 1806.304; and

(c) is included in each official contract file in the place for filing a Justification for Other than Full and Open Competition (see NASA Form 1098).

**PART 1814—SEALED BIDDING****1814.404-170 [Amended]**

6. In section 1814.404-170, paragraph (b) introductory text, the reference "FAR 14.404-1(c)(6) or (7)" is revised to read "FAR 14.404-1(c)(6), (7), or (8)."

**PART 1815—CONTRACTING BY NEGOTIATION**

7. Part 1815 is amended as set forth below:

**1815.613-70 [Amended]**

a. In section 1815.613-70, the word "differs" is revised to read "differ".

b. In section 1815.805-5, paragraph (b) is revised to read as set forth below:

**1815.805-5 Field pricing support.**

(b) Whenever available data are adequate for a reasonableness determination, the contracting officer shall document the contract file to reflect the basis of the determination.

**PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS****Subpart 1819.1—[Removed]**

8. Subpart 1819.1 is removed in its entirety.

**PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS****Subpart 1836.7—[Amended]**

9. In the Table of Contents and the title of subpart 1836.7, the phrase "Standard Forms" is revised to read "Standard and Optional Forms."

**PART 1849—TERMINATION OF CONTRACTS****1849.102-70 [Amended]**

10. In section 1849.102-70, in paragraph (b) introductory text and in paragraphs (c) and (d), the phrase "Office of External Relations, NASA Headquarters (Code X)" is revised to read "Office of Legislative Affairs, NASA Headquarters (Code LB)."

**PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****1852.219-72 [Removed]**

11. Section 1852.219-72 is removed in its entirety.

**PART 1852—FORMS**

12. Part 1853 is amended as set forth below:

**1853.207 [Amended]**

a. In section 1853.207, paragraphs (a) and (b), the citation "1807.170-1(a)" is revised to read "1807.170-1(b)."

[FR Doc. 91-4703 Filed 2-28-91; 8:45 am]

BILLING CODE 7510-01-M

**INTERSTATE COMMERCE COMMISSION****49 CFR Part 1011**

[Ex Parte 55 Sub No. 82]

**Commission Organization; Delegations of Authority to the Secretary**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rule.

**SUMMARY:** The Chairman of the Commission delegates to the Secretary the authority previously delegated to the Director of the Office of Proceedings (1) to dispose of routine procedural matters in proceedings assigned for handling

under the modified procedure; (2) to decide, unless otherwise ordered by the Chairman or a majority of the Commission in individual proceedings, whether operating rights and complaint proceedings should be handled under the modified procedure or assigned to the Office of Hearings; and (3) to grant requests for voluntary dismissals of complaints and applications. In carrying out these duties, the Secretary shall consult, as necessary, with the General Counsel and the Director of any other Commission Office to which an individual proceeding has been assigned. This action is necessary to implement a realignment of functions that will expedite the disposition of routine procedural matters. The intended effect of this action is to enhance the efficiency of the Commission's operations and improve the quality of its service to the public.

**EFFECTIVE DATE:** March 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Kathleen M. King (202) 275-7429. (TDD for hearing impaired: (202) 275-1721.)

**SUPPLEMENTARY INFORMATION:** Part 1011 of title 49 of the Code of Federal Regulations describes the organization of the Interstate Commerce Commission and the delegation of jurisdiction and responsibilities to the Commission and its components. The Chairman is delegated certain authority to act for the Commission, largely in matters of a procedural nature. Section 1011.7 of title 49 redelegates to specified Commission employees the authority to act in certain matters assigned to the Chairman. Several functions that were previously delegated by the Chairman to the Director of the Office of Proceedings are now being delegated instead to the Secretary by the accompanying amendments, for the reasons stated in the summary. Because these rules involve the internal organization and procedures of the Commission, they are issued by the Chairman in final form, and public comments are not being requested.

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

This action will not have a significant economic impact on a substantial number of small business entities. It imposes no new regulatory requirements on any entity.

**List of Subjects in 49 CFR Part 1011**

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

Decided: February 21, 1991.



By the Commission, Edward J. Philbin,  
Chairman.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set out in the preamble, title 49, chapter X, part 1011 of the Code of Federal Regulations is amended as follows:

#### **PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY**

1. The authority citation for part 1011 continues to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

2. Section 1011.7 is amended by revising paragraphs (c)(3) and (d) to read as follows:

#### **§ 1011.7 Delegations of authority by the Chairman of the Interstate Commerce Commission**

\* \* \* \* \*

(c) \* \* \*

(3) Unless otherwise ordered by the Commission in individual proceedings, authority to dispose of routine procedural matters in proceedings assigned for handling under modified procedure, other than those assigned to an administrative law judge, or arising in a proceeding after the issuance of an initial decision of a hearing officer in proceedings which have been the subject of an oral hearing, is delegated to the Secretary of the Commission. The Secretary shall also have authority, unless otherwise ordered by the Chairman or a majority of the Commission in individual proceedings, to decide whether operating rights application and complaint proceedings shall be handled under the modified procedure or assigned to the Office of Hearings. In carrying out these duties, the Secretary shall consult, as necessary, with the General Counsel and the Director of any other Commission Office to which an individual proceeding has been assigned.

(d) Except as provided in § 1113.3(b)(1), authority to dismiss complaints at the request of the complainant, or applications at the request of applicants, is delegated to the Secretary and the Chief Administrative Law Judge of the Commission.

\* \* \* \* \*

[FR Doc. 91-4875 Filed 2-28-91; 8:45 am]

BILLING CODE 7035-01-M

#### **49 CFR Part 1330**

[Ex Parte No. 346 (Sub-No. 23)]

#### **Railroad Exemption—Filing Quotations Under Section 10721**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is amending its rules at 49 CFR 1330.1 to exempt nonagricultural rate quotations by railroads from the filing requirements of 49 U.S.C. 10721. The Notice of Proposed Rulemaking was published March 25, 1987, at 52 FR 9513. The amendment is unopposed, and will result in less regulation, and cost savings to the Commission and rail industry. The Commission emphasized that revocation petitions under 49 U.S.C. 10505(d) could be filed at any time should circumstances change.

**EFFECTIVE DATE:** The amendment is effective on March 31, 1991.

#### **FOR FURTHER INFORMATION CONTACT:**

Joseph H. Dettmar (202) 275-7245. (TDD for hearing impaired: (202) 275-1721).

#### **SUPPLEMENTARY INFORMATION:**

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

This action will not significantly affect either the quality of the human environment or the conservation of energy resources. This rule will not have a significant economic impact on a substantial number of small entities. It will result in a reduction of, and not an addition to, regulatory requirements.

#### **List of Subjects in 49 CFR Part 1330**

Freight, Freight forwarders, Government procurement, Maritime carriers, Motor carriers, Pipelines, Railroads.

Authority: 49 U.S.C. 10321, 10721, 10762, and 10505.

Decided: February 21, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,  
Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1330 of the Code of Federal Regulations is amended as follows:

#### **PART 1330—FILING QUOTATIONS FOR GOVERNMENT SHIPMENTS AT REDUCED RATES**

1. The authority citation for part 1330 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10721, 10762, and 10505.

2. Section 1330.1 is revised to read as follows:

#### **§ 1330.1 Applicability.**

The provisions of this part shall apply to copies of all quotations or tenders made by all common carriers by railroad, including express and sleeping-cars companies, by pipeline, by motor vehicle, and by water, and household goods freight forwarders, to the United States Government, or any agency or department thereof, for the transportation, storage or handling of property or the transportation of persons free or at reduced rates as permitted by 49 U.S.C. 10721, except quotations or tenders by railroads for transportation of nonagricultural commodities and quotations or tenders which, as indicated by the United States Government or any department or agency thereof to any carrier or carriers, involves information the disclosure of which would endanger the national security.

[FR Doc. 91-4876 Filed 2-28-91; 8:45 am]

BILLING CODE 7035-01-M

#### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Parts 611 and 620**

[Docket No. 910227-1027]

#### **Foreign Fishing, General Provisions for Domestic Fisheries**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule amends foreign and domestic fishing regulations contained in 50 CFR parts 611 and 620 by adding fishery enforcement officers (FEOs) to the list of persons designated by the Secretary of Commerce (Secretary) as authorized officers for the purposes of enforcement of provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The intent is to increase efficiency of fishery enforcement efforts.

**EFFECTIVE DATE:** March 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Special Agent Gary A. Wood, NOAA,



NMFS, 1335 East-West Highway, Silver Spring, MD 20910, 301-427-2300.

**SUPPLEMENTARY INFORMATION:** Section 311(b)(1) of the Magnuson Act provides authority to the Secretary to authorize officers to enforce the provisions of the Magnuson Act. An authorized officer may, with or without a warrant, arrest any person if he or she has reasonable cause to believe that such person has committed an act prohibited by section 307 of the Magnuson Act; board, search or inspect any fishing vessel that is subject to the provisions of the Magnuson Act; seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of the Magnuson Act; and seize any other evidence related to any violation or any provision of the Magnuson Act. Authorized officers may also execute any warrant or other process issued by any court of competent jurisdiction, and execute any other lawful authority.

The Magnuson Act also confers upon authorized officers with law enforcement responsibilities the authority to make an arrest, without a warrant, for an offense against the United States committed in his or her presence, or for a felony cognizable under the laws of the United States. Such authority can be exercised only if the authorized officer is performing a duty regarding fishery or other marine law enforcement, and he or she has reasonable grounds to believe that the person to be arrested has committed or is committing a felony.

FEOs will be uniformed officers whose primary function under the Magnuson Act will be to conduct dockside patrols to inspect fishing vessels, catches, gear, logbooks and other routine duties to ensure that fishermen are in compliance with the provision of applicable fishery management plans. FEOs may also inspect the facilities and records of fish dealers, fish processors, warehouse operators, and persons engaged in the transportation of fish. They may also conduct at-sea surface and aerial patrols and conduct at-sea boardings.

The intent of NMFS in employing FEOs is to increase the efficiency of the patrol effort by creating a unit that specializes in this task.

#### Classification

This final rule is issued under the Magnuson Act. Because this is a rule relating to agency management or personnel, section 553 of the

Administrative Procedures Act does not apply.

Because this rule is being issued without prior comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act and none has been prepared.

Executive Order 12291 does not apply because this is a rule relating to agency management or personnel. The rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612, and does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act. There is no change in the regulatory impacts previously reviewed and analyzed.

#### List of Subjects in 50 CFR Parts 611 and 620

Fish, Fisheries, Foreign fishing.

Dated: February 22, 1991.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR parts 611 and 620 are amended as follows:

#### PART 611—FOREIGN FISHING

1. The authority citation for part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. In § 611.2, under the definition for *Authorized officer*, paragraph (b) is revised to read as follows:

##### § 611.2 Definitions.

\* \* \* \* \*

*Authorized officers means—*

\* \* \* \* \*

(b) Any special agent or fishery enforcement officer of the National Marine Fisheries Service;

\* \* \* \* \*

#### PART 620—GENERAL PROVISIONS FOR DOMESTIC FISHERIES

3. The authority citation for part 620 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 620.2, under the definition for *Authorized officer*, paragraph (b) is revised to read as follows:

##### § 620.2 Definitions.

\* \* \* \* \*

*Authorized officer means:*

\* \* \* \* \*

(b) Any special agent or fishery enforcement officer of NMFS;

\* \* \* \* \*

[FR Doc. 91-4879 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-22-M

#### 50 CFR Parts 611 and 672

[Docket No. 901184-1042]

#### Foreign Fishing; Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final notice of 1991 initial specifications of groundfish and Pacific halibut bycatch management measures; directed fishing allowances; prohibition of directed fishing; and request for comments.

**SUMMARY:** The Secretary of Commerce (Secretary) announces initial specifications of groundfish in the Gulf of Alaska for the 1991 fishing year and determinations pertaining to 1991 management of the Gulf of Alaska groundfish fisheries with the exception of pollock initial specifications. This action is necessary to inform the public of the determinations. The measures are intended to carry out management objectives contained in the Fishery Management Plan for the Gulf of Alaska Groundfish Fishery (FMP).

**DATES:** Effective: 5:05 p.m., February 25, 1991. Comments are invited on the proposed apportionments of reserves on or before March 18, 1991.

**ADDRESSES:** Comments should be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 021688, Juneau, AK 99802.

**FOR FURTHER INFORMATION CONTACT:** Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7228.

#### SUPPLEMENTARY INFORMATION:

##### Background

This notice announces for the 1991 fishing year (1) total allowable catches (TACs) for each category of groundfish in the Gulf of Alaska and apportionments thereof to domestic annual processing (DAP) except for pollock; (2) proposed apportionment of reserves to DAP; (3) assignments of the sablefish TAC to authorized fishing gear users; (4) prohibited species catch (PSC) limits relevant to fully utilized groundfish species; (5) halibut PSC mortality limits; (6) seasonal apportionments of the halibut PSC limits; and (7) prohibition of directed fishing for shortraker/rougheye rockfish



in the Western Regulatory Area of the Gulf of Alaska. Each of these items is discussed as follows.

The process for determining TACs for groundfish species in the Gulf of Alaska is established by the FMP, which was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations appearing at 50 CFR 611.92 and part 672. The sum of the TACs for all species must fall within the combined optimum yield (OY) range established for these species of 116,000–800,000 metric tons (mt) (§ 672.20(a)(2)(ii)).

Under § 611.92(c)(1) and § 672.20(a)(2)(i), TACs are apportioned initially among DAP, joint venture processing (JVP), total allowable level of foreign fishing (TALFF), and reserves. The DAP amounts are intended for harvest by U.S. fishermen for delivery and sale to U.S. processors. Any JVP amounts are intended for joint ventures in which U.S. fishermen typically deliver their catches to foreign processors at sea. Any TALFF amounts are intended for harvest by foreign fishermen. The reserves for the Gulf of Alaska are 20 percent of the TAC for pollock, Pacific cod, flatfish species, and "other species." If necessary, these reserve amounts may be set aside for possible reapportionment to DAP and/or JVP if the initial apportionments prove inadequate. Reserves that are not reapportioned to DAP or JVP may be reapportioned to TALFF. Other groundfish target species, including sablefish and the rockfish species, are fully utilized by DAP, and no reserves are established.

Under § 672.20(c)(1), the preliminary specifications of DAP were published in the Federal Register (55 FR 47897, November 16, 1990). No JVP or TALFF amounts were specified. Under § 672.20(c)(1)(i), one-fourth of preliminary specifications and apportionments and one-fourth of halibut prohibited species catch limits are effective January 1 on an interim basis and are superseded by this Federal Register notice of final specifications.

The Council met December 3–7, 1990, to review the best available scientific information concerning groundfish stocks, intended harvest plans for 1991, and estimates made by NMFS concerning the extent to which U.S. fishermen would harvest amounts of groundfish. This information is contained in the Stock Assessment and Fishery Evaluation Report for the 1991 Gulf of Alaska Groundfish Fishery (SAFE report) dated November 1990,

which was prepared and presented by the Gulf of Alaska Groundfish Plan Team to the Council and to the Council's Scientific and Statistical Committee (SSC) and Advisory Panel (AP). Information contained in the SAFE report was derived from:

1. The 1990 hydroacoustic survey in Shelikof Strait conducted by the NMFS Alaska Fisheries Science Center;
  2. 1990 NMFS observer reports;
  3. Results of the 1990 bottom-trawl survey in the Gulf of Alaska;
  4. Results from the 1990 Domestic and U.S.-Japan Cooperative Longline Surveys; and
  5. Groundfish catches obtained from the 1990 Weekly Production Reports.
- New information and subsequent actions by the Council for each species and species complex are summarized as follows. Additional information can be found in the SAFE report.

#### 1. Total Allowable Catches

The sum of the TACs approved by the Council for Gulf of Alaska groundfish is 331,089 mt, within the OY range specified by the FMP.

**Pollock**—The exploitable biomass of pollock for 1991 is estimated to be 1,303,000 mt based on a projection of 1990 biomass estimated from a stock synthesis (SS) model. The current assessment incorporates two major changes into the SS model. First, the 1990 Gulf-wide bottom-trawl survey estimated biomass at 1,004,377 mt. Second, because a significant component of older fish (age 10 and older) was discovered in offshore waters outside of Shelikof Strait in 1989 and 1990, the natural mortality rate was lowered from 0.4 to 0.3.

When the SS model incorporates survey selectivity, 1990 biomass is estimated at 1,372,000 mt for ages 3 years and older. Similarly, the current assessment estimates the 1989 biomass to be 1,564,000 mt for ages 3 years and older. According to the current assessment with a revised hindcast of historical biomasses, the population is at a medium level of abundance.

Although higher than previously believed, the abundance of pollock has been declining since 1988. Hydroacoustic survey estimates in 1990 failed to show an increase from the 1989 hydroacoustic survey estimates. The contribution of the older fish will be minimal in future years. The current decline in abundance is attributed to weak 1982, 1983, 1986, and 1987 year classes.

The SSC adopted the Plan Team's recommended allowable biological catch (ABC) for the combined Western/

Central Regulatory Area of 130,000 mt, which was derived by applying a 10-percent exploitation rate to the estimated 1991 exploitable biomass. The AP recommended that TAC be equal to the ABC. The SSC concurred with the Plan Team's recommendation that part of the TAC (6,250 mt) be allocated to the Shelikof Strait District to provide for a fishery for the collection of data. The SSC and AP also recommended that the ABC and TAC in the Eastern Regulatory Area be 3,400 mt, which is the same specification made in 1990.

The Council adopted the AP's recommendations for pollock TACs and the SSC's recommendations for ABCs of 130,000 mt in the combined Western/Central Regulatory Area and 3,400 mt in the Eastern Regulatory Area.

**Pacific cod**—The 1990 bottom-trawl survey of the Gulf of Alaska provided data for estimating biomass of Pacific cod by management area. Incorporating the bottom-trawl results in the Stock Reduction Analysis model resulted in an estimated exploitable biomass for 1991 of 424,100 mt, a decline in biomass from previous years. The projection model estimates that this decline may continue.

The SSC recommended that the ABC be 77,900 mt. The AP recommended that the TAC be equal to the ABC. The Council adopted the SSC recommendations for ABC and the AP recommendations for TAC, including apportionments among the Regulatory Areas as follows: Western—30,000 mt; Central—45,000 mt; and Eastern—2,900 mt.

**Flatfish**—In 1990, three categories of flatfish were established: Deep-water, shallow-water, and arrowtooth flounder. In 1991, flathead sole is in a category by itself, and the 1991 categories are as follows: Deep-water flatfish, shallow-water flatfish, arrowtooth flounder, and flathead sole.

In 1990, flathead sole was in the deep-water flatfish category; however, results of the 1990 trawl survey and fishery information show that most of the flathead sole biomass is in shallow water. A separate TAC for flathead sole was established because the TAC for that category would be inflated and could result in too high an exploitation rate for rock sole if flathead sole were included in the shallow-water flatfish category. Deep-water flatfish includes rex sole, dover sole, and Greenland turbot. Although an ABC for Greenland turbot is not included in the calculation of ABC for deep-water flatfish, small catches of Greenland turbot are reported and will be accounted for in the deep-water flatfish component.



Shallow-water flatfish includes all flatfish not including deep-water flatfish, flathead sole, or arrowtooth flounder.

The Council adopted the SSC's recommendations for the flatfish ABC's,

which were apportioned among the regulatory areas (see table 1), and the AP's recommendations for flatfish TACs, which are less than the ABCs (see table 2 for TACs). Reductions in

flatfish TACs reflect the concern that halibut PSC limits would not support harvest amounts equal to the sum of the ABCs.

TABLE 1.—ABCs FOR FLATFISH CATEGORIES IN 1991

[All values are in metric tons]

	Regulatory area			
	Western	Central	Eastern	Total
Deep-water.....	2,000	38,900	9,600	50,500
Shallow-water.....	48,800	22,200	3,000	74,000
Arrowtooth flounder.....	40,800	272,100	27,200	340,100
Flathead sole.....	12,600	32,700	5,000	50,300

TABLE 2.—ABCs, INITIAL GROUNDFISH TACS AND DAPS (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE/EAST YAKUTAT (SEO/EYK), GULF-WIDE (GW), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS OF THE GULF OF ALASKA. AMOUNTS SPECIFIED AS JOINT VENTURE PROCESSING (JVP) AND TOTAL ALLOW LEVEL OF FOREIGN FISHING (TALFF) INITIALLY ARE SET AT ZERO AND ARE NOT SHOWN IN THIS TABLE. RESERVES ARE APPORTIONED TO DAP, EFFECTIVE JANUARY 1, 1991.

Species and area <sup>1</sup>	ABC	TAC=DAP
Pacific cod:		
W.....	30,000	30,000
C.....	45,000	45,000
E.....	2,900	2,900
Total.....	77,900	77,900
Flatfish <sup>2</sup> (deep water):		
W.....	2,000	2,000
C.....	38,900	10,000
E.....	9,600	3,000
Total.....	50,500	15,000
Flatfish <sup>3</sup> (shallow water):		
W.....	48,800	3,000
C.....	22,200	7,000
E.....	3,000	2,000
Total.....	74,000	12,000
Flathead sole:		
W.....	12,600	2,000
C.....	32,700	5,000
E.....	5,000	3,000
Total.....	50,300	10,000
Arrowtooth flounder:		
W.....	40,800	5,000
C.....	272,100	10,000
E.....	27,200	5,000
Total.....	340,100	20,000
Sablefish:		
W.....	2,925	2,925
C.....	10,575	10,575

TABLE 2.—ABCs, INITIAL GROUNDFISH TACS AND DAPS (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE/EAST YAKUTAT (SEO/EYK), GULF-WIDE (GW), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS OF THE GULF OF ALASKA. AMOUNTS SPECIFIED AS JOINT VENTURE PROCESSING (JVP) AND TOTAL ALLOW LEVEL OF FOREIGN FISHING (TALFF) INITIALLY ARE SET AT ZERO AND ARE NOT SHOWN IN THIS TABLE. RESERVES ARE APPORTIONED TO DAP, EFFECTIVE JANUARY 1, 1991.—Continued

Species and area <sup>1</sup>	ABC	TAC=DAP
YK.....	4,050	4,050
EO/EYK.....	4,950	4,950
Total.....	22,500	22,500
Pelagic <sup>4</sup> shelf rockfish:		
W.....		800
C.....		3,100
E.....		900
Total.....	4,800	4,800
Pacific ocean perch <sup>5</sup> :		
W.....		1,624
C.....		1,798
E.....		2,378
Total.....	5,800	5,800
Shortraker/rougeye rockfish <sup>6</sup> :		
W.....		100
C.....		1,320
E.....		580
Total.....	2,000	2,000
Demersal shelf rockfish <sup>7</sup> :		
SEO.....	445	425
"Other rockfish" <sup>8</sup> *:		
W.....		1,212
C.....		5,454
E.....		3,434
Total.....	10,100	10,100

TABLE 2.—ABCs, INITIAL GROUNDFISH TACS AND DAPS (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE/EAST YAKUTAT (SEO/EYK), GULF-WIDE (GW), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS OF THE GULF OF ALASKA. AMOUNTS SPECIFIED AS JOINT VENTURE PROCESSING (JVP) AND TOTAL ALLOW LEVEL OF FOREIGN FISHING (TALFF) INITIALLY ARE SET AT ZERO AND ARE NOT SHOWN IN THIS TABLE. RESERVES ARE APPORTIONED TO DAP, EFFECTIVE JANUARY 1, 1991.—Continued

Species and area <sup>1</sup>	ABC	TAC=DAP
Thornyhead rockfish:		
GW.....	1,798	1,398
"Other species" <sup>10</sup> :		
GW.....	N/A	15,766
Total.....	640,243	197,689

<sup>1</sup> See figure 1 of § 672.20 for description of regulatory areas/districts.

<sup>2</sup> The category "deep-water flatfish" means rex sole, Dover sole, and Greenland turbot.

<sup>3</sup> The category "shallow-water flatfish" means flatfish not including deep-water flatfish, arrowtooth flounder, or flathead sole.

<sup>4</sup> The category "pelagic shelf rockfish" includes five species: *Sebastes melanops* (black rockfish), *S. mystinus* (blue rockfish), *S. ciliatus* (dusky rockfish), *S. entomelas* (widow rockfish), and *S. flavidus* (yellowtail rockfish).

<sup>5</sup> Pacific ocean perch means *S. alutus*.

<sup>6</sup> The category shortraker/rougeye rockfish includes two species *Sebastes borealis* and *S. alou-tianus*, respectively.

<sup>7</sup> The category demersal shelf rockfish includes eight species: *Sebastes nebulosus* (China rockfish), *S. caurinus* (copper rockfish), *S. maliger* (quillback rockfish), *S. helvomaculatus* (rosethorn rockfish), *S. nigrocinctus* (tiger rockfish), *S. ruberrimus* (yelloweye rockfish), *S. pinniger* (canary rockfish), and *S. babcocki* (redbanded rockfish).

<sup>8</sup> The category slope rockfish includes 17 species: *Sebastes polyspinis* (northern rockfish), *S. zacentrus* (sharpchin rockfish), *S. aurora* (aurora rockfish), *S. melanostomus* (blackgill rockfish), *S. goodei* (chili-pepper rockfish), *S. crameri* (darkblotched rockfish), *S. elongatus* (greenstriped rockfish), *S. variegatus* (harlequin rockfish), *S. wilsoni* (pygmy rockfish), *S. jordani* (shortbelly rockfish), *S. diploproa* (splitnose



rockfish), *S. saxicola* (stripetail rockfish), *S. ministus* (vermillion rockfish), and *S. reedi* (yellowmouth rockfish), *S. paucispinis* (bocaccio), *S. brevispinis* (silvergray rockfish), and *S. proriger* (redstripe rockfish).

The "other rockfish" category in the Western and Central Regulatory Areas and in the West Yakutat and East Yakutat Districts includes slope rockfish and demersal shelf rockfish. The "other rockfish" category in the Southeast Outside District includes slope rockfish.

The "other species" category includes Atka mackerel, sculpins, sharks, skates, eulachon, smelts, capelin, squid, and octopus. The TAC is equal to 5 percent of the TACs of the target species.

**Sablefish**—The abundance of sablefish has decreased from 1990 and other recent years. An ABC was computed for 1991 for the combined Gulf of Alaska, Bering Sea, and Aleutian Islands management areas. The proportion of the Alaska-wide ABC attributed to the Gulf of Alaska is 22,500 mt, based on the distribution of biomass as determined by the 1990 longline survey.

The SSC recommended that the ABC be 22,500 mt. The AP recommended that the Gulf-wide TAC be set equal to the ABC and be apportioned among the regulatory areas and districts in the same proportions as the biomass distribution shown from the 1990 longline survey. The Council adopted the SSC recommendations for ABC and the AP recommendations for TAC, including apportionments among the regulatory areas and districts, as follows: Western—2,925 mt; Central—10,575 mt; West Yakutat—4,050 mt; and Southeast Outside/East Yakutat—4,950 mt.

**Rockfish Assemblages**—In 1990, three categories of rockfish in the genus *Sebastes* were managed: "Other rockfish," pelagic shelf rockfish, and demersal shelf rockfish. Starting in 1991, two additional rockfish categories—shortraker/rougheye rockfish and Pacific ocean perch—will be managed. Shortraker/rougheye rockfish includes shortraker rockfish (*S. borealis*) and rougheye (*S. aleutianus*) rockfish. Pacific ocean perch includes only *S. alutus*. All three species were part of the "other rockfish" category in 1990.

Shortraker and rougheye rockfish are being managed separately because the abundance of these deep-water rockfishes is low. Rather than reduce the ABC for the "other rockfish" category to avoid overharvesting these species, a separate category is established.

Pacific ocean perch are the most abundant species in the rockfish assemblage and make up 40.1 percent of the Gulf of Alaska rockfish biomass. Exploitation rates for the "other rockfish" category based primarily upon Pacific ocean perch exploitation rates could lead to overfishing of some species; therefore, Pacific ocean perch is made a separate category.

The condition of, and Council action for, each of the five rockfish categories is as follows:

#### Shortraker/Rougheye Rockfish

Shortraker and rougheye rockfish are managed as a single category in the Western, Central, and Eastern Regulatory Areas. The proportion of shortraker and rougheye rockfish in trawl surveys at depths greater than 200 meters (23.8 percent) was 62 percent higher than the total 1990 estimate of exploitable biomass for the "other rockfish" category as specified in 1990 (14.7 percent). The effective exploitation rate for shortraker and rougheye rockfish would be much higher than intended if the exploitation rate for the "other rockfish" category were used. To avoid overharvesting shortraker and rougheye rockfish, the SSC recommended that the ABC be 2,000 mt. The AP recommended that the TAC equal the ABC for shortraker/rougheye rockfish and be apportioned among the areas as follows: Western—100 mt, Central—1,320 mt, and Eastern—580 mt. The Council adopted the SSC and AP recommendations.

#### Pacific Ocean Perch

Pacific ocean perch, formerly part of the "other rockfish" category, are now a single species for management purposes in the Western, Central, and Eastern Regulatory Areas. The SSC recommended an ABC for Pacific ocean perch of 5,800 mt, and the AP recommended that the TAC be equal to the ABC and apportioned among the management areas as follows: Western—1,624 mt, Central—1,798 mt, and Eastern—2,378 mt. The Council adopted the SSC and AP recommendations.

#### Pelagic Shelf Rockfish

In the Western, Central, and Eastern Regulatory Areas, pelagic shelf rockfish includes the five rockfish species listed in footnote 4 of table 2 of this notice.

The SSC recommended that the ABC for pelagic shelf rockfish be 4,800 mt. This amount is based on an exploitation rate equal to the natural mortality rate of 0.05. The AP recommended that the TAC equal the ABC and be apportioned among the regulatory areas according to the average of the 1987 and 1990 biomass estimates as follows: Western—800 mt, Central—3,100 mt, and Eastern—900 mt. The Council adopted the SSC and AP recommendations.

#### Demersal Shelf Rockfish

In the Southeast Outside District, demersal shelf rockfish means the eight

rockfish species listed in footnote 7 to table 2 of this notice. A TAC is established only in the Southeast Outside District. After a review of commercial fisheries and survey data, the Alaska Department of Fish and Game (ADF&G) recommended that the demersal shelf rockfish category be modified by (1) removing bocaccio (*S. paucispinis*), silvergray (*S. brevispinis*), and redstripe (*S. proriger*) rockfishes and placing them in the slope rockfish category and by (2) adding redbanded rockfish (*S. babcocki*). In 1990, redbanded rockfish were in the slope rockfish category. The Council adopted the ADF&G's recommendations.

The SSC recommended that the ABC for demersal shelf rockfish be 445 mt. The AP recommended that the TAC be equal to the ABC. The Council adopted the SSC recommendation for the ABC, but recommended that the TAC be set conservatively at 425 mt because the condition of demersal shelf rockfish is not well known.

#### "Other Rockfish"

In the Western and Central Regulatory Areas and the Eastern Regulatory Area west of 137° W. longitude, "other rockfish" includes the 17 species of slope rockfish and the eight species of demersal shelf rockfish listed in footnotes 8 and 9 to table 2 of this notice. TACs are established for these combined assemblages in the Western and Central Regulatory Areas.

In the Southeast Outside District, "other rockfish" means species of slope rockfish in the footnote 8 of table 2 of this notice.

The SSC recommended that the ABC for "other rockfish" be 10,100 mt. The AP recommended that the TAC equal the ABC and be apportioned among the regulatory areas as follows: Western—2,925 mt, Central—5,454 mt, and Eastern—3,434 mt. The Council adopted the SSC's recommendation for ABC and the AP's recommendation for TAC.

#### Thornyhead Rockfish

The SSC recommended that the ABC should be 1,798 mt. This amount is calculated by multiplying a fishing mortality rate of 0.07 times the adjusted trawl biomass obtained from the 1990 trawl survey. The AP recommended that the TAC be 1,398 mt to protect this category from being overfished. The Council adopted the SSC's recommendation for ABC and the AP's recommendation for TAC.

#### "Other Species" Category

Under the FMP, the TAC for this species category is 5 percent of the sum



of the TACs established for the other groundfish categories. Thus, TAC is 15,766 mt.

#### Apportionment of TACs

The Council, after adopting the TACs in table 2, deliberated on the apportionment of the TACs for each category between DAP, JVP, TALFF, and reserve. The Council reviewed the results of the NMFS U.S. processor survey that was conducted before the Council's meeting. (The U.S. processing industry is queried about its processing capacity and the amounts of each groundfish species needed during 1991.)

The Regional Director presented the results of the survey to the Council and made recommendations for initial DAP specifications. As a result of this process, the Council recommended that TALFF and JVP be set at zero because all species are expected to be fully utilized by U.S. fishermen in DAP fisheries. DAP is set to equal the TAC for each category.

#### Secretarial Approval of TACs

The Secretary has reviewed the Council's recommendations for TAC specifications and apportionments and hereby approves and implements these specifications under § 672.20(c)(1), with the exception of the pollock TAC. The Secretary defers approval of the pollock TAC. The interim preliminary initial specification for pollock TAC will remain in effect until superseded by the final 1991 initial TAC specification, which will be published in the *Federal Register* at a later date.

In reviewing the recommended ABCs for the rockfish categories, the Secretary notes that the Council adopted Gulf of Alaska-wide ABCs for each of the rockfish categories and apportioned the ABCs among the management areas in proportion to the biomass distribution determined from the trawl surveys. Information on the life history of Pacific ocean perch shows that stock mixing occurs during early life stages. NMFS scientists believe that this stock mixing during early life stages is typical for each of the rockfish categories, and that further apportioning of Gulf of Alaska-wide ABCs is not appropriate for rockfish. The secretary concurs with the Council's TAC distributions among the regulatory areas for each of the rockfish categories but has adjusted table 2 of this notice to show Gulf of Alaska-Wide ABCs without further apportionments among the regulatory areas.

#### 2. Prohibition of Directed Fishing for Shortraker/Rougheye Rockfish in the Western Regulatory Area

The Regional Director has determined that the TAC for shortraker/rougheye rockfish will be taken as incidental catch to support other directed fisheries for other groundfish species in the Western Regulatory Area.

The Regional Director, under § 672.20(c)(2), establishes a directed fishing allowance in the Western Regulatory Area of 0 mt for shortraker/rougheye rockfish effective February 25, 1991, and prohibits for the remainder of the fishing year directed fishing for shortraker/rougheye rockfish in the Western Regulatory Area. Under § 672.20(g)(3), the operator of a vessel is engaged in directed fishing for shortraker/rougheye rockfish if he retains at any particular time during a trip an amount of this species group in an amount equal to or greater than 20 percent of all other fish species retained at the same time on the vessel during the same trip.

#### 3. Proposed Apportionment of Reserves to DAP

The FMP stipulates that 20 percent of each TAC for pollock, Pacific cod, flatfish species, and the "other species" category be set aside in a reserve for possible reapportionment at a later date (§ 672.20(a)(2)(i)). Because DAP is projected to need all reserve amounts, the Secretary, at this time, is proposing to reapportion reserves for each species category, except pollock, to DAP. By doing so, the Secretary is anticipating that the domestic industry will need all of the DAP amounts so specified. The specifications of DAP shown in table 2 of this notice reflect proposed DAP totals if the reserves are apportioned after a 15-day comment period.

The Secretary is deferring approval of the pollock TAC. The reserve attributed to pollock under § 672.20(a)(2)(i) will be apportioned when a TAC for pollock is approved and implemented.

Under § 672.20(d)(5)(iv), comments should focus on whether, and the extent to which, vessels of the United States will harvest reserve or DAH amounts during the remainder of the year and whether, and the extent to which, U.S. harvested groundfish can or will be processed by U.S. fish processors or received at sea by foreign fishing vessels.

#### 4. Assignments of the Sablefish TAC to Authorized Fishing Gear Users

Sablefish TACs for each of the regulatory areas and districts are further assigned to hook-and-line and trawl

gear (Table 4) according to the percentages required by § 672.24(c).

TABLE 4.—SABLEFISH TOTAL ALLOWABLE CATCHES (TACs) IN METRIC TONS, ALLOCATED TO AUTHORIZED GEAR IN THE REGULATORY AREAS AND DISTRICTS OF THE GULF OF ALASKA.

Area/District	TAC	Hook-and-line share	Trawl share
Western.....	2,925	2,340	585
Central.....	10,575	8,460	2,115
West Yakutat.....	4,050	3,850	200
Southeast Outside/ East Yakutat.....	4,950	4,700	250
Total.....	22,500	19,350	3,150

#### 5. PSC Limits Relevant to Fully Utilized Groundfish Species

Under § 672.20(b)(1), if the Secretary determines after consultation with the Council that the TAC for any species or species group will be fully utilized in the DAP fishery, he may specify a groundfish PSC limit applicable to the JVP fisheries for that species or species group.

The Council recommended that DAP equal TAC for each species category. Zero amounts of JVP are available. The Secretary concurs with the Council's recommendation, and has not established any JVP amounts. Therefore, no PSC limits under § 672.20(b)(1) are necessary. If future apportionments from DAP to JVP occur, the Secretary will also make the necessary determinations under § 672.20(c)(4) for PSC limits at that time.

#### 6. Halibut Prohibited Species Catch (PSC) Mortality Limits

Under § 672.20(f)(2)(ii), annual Pacific halibut PSC limits are established and apportioned to trawl and hook-and-line gear and may be apportioned to pot gear. For 1991, the Council recommended that 2,000 mt and 750 mt of halibut mortality be apportioned to trawl and hook-and-line gear, respectively. For purposes of accounting for halibut bycatch mortality, hook-and-line gear includes jigs.

The Regional Director will use observed halibut bycatch rates and reported groundfish catch to project when the 1991 halibut PSC limits will be reached during the fishing year. Mortality rates vary, depending on the gear being used. Based on information contained in the SAFE report, assumed rates of halibut mortality are the following: non-pelagic trawl, 50 percent



of those caught and released; hook-and-line, 16 percent; and pot, 12 percent.

The Council recommended that pot gear be exempt from accountability for halibut bycatch mortality for the 1991 fishing year. Groundfish catches by pot gear have been small to date. Observer information, although not substantial, suggests that bycatch mortality is low, about 12 percent of the halibut caught in pots. No new information is available to warrant changing the 12-percent assumption. The Council decided to exempt pot gear for one more year, during which time additional information will be forthcoming to make recommendations about apportioning a PSC allowance to pot gear in future years.

The Secretary concurs with the Council's recommendations listed above. In doing so, the Secretary has considered the following types of information as presented in and summarized from the 1991 SAFE report, or as otherwise available from NMFS, ADF&G, the International Pacific Halibut Commission (IPHC), or public testimony.

#### (A) Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is 1990 data on the groundfish fishery collected by NMFS Observers. The total calculated halibut bycatch mortality by all gear types through November 7, 1990, was 2,758 mt. Resulting mortality by gear type was trawl gear—1,760 mt (64 percent of all mortality), hook-and-line gear—967 mt (35 percent), and pot gear—31 mt (1 percent). In 1990, these amounts constrained groundfish catches in fisheries using hook-and-line gear and trawl gear: hook-and-line fisheries were closed on May 29, and trawl fisheries were closed on November 21. Pot gear was exempt from halibut PSC accountability during 1990.

Sablefish is the only Gulf of Alaska groundfish species that is allocated by gear type. When the hook-and-line fishery was closed on May 29, 1990, all the TAC for sablefish assigned to hook-and-line in the Eastern and Central Regulatory Areas had been caught. In the Western Regulatory Area, 1,497 mt of sablefish TAC remained unharvested because the halibut PSC assigned to hook-and-line gear had been reached.

#### (B) Expected Changes in Groundfish Catch

The sum of the 1991 groundfish TACs excluding the pollock TAC is 197,079 mt. The 1991 TAC for Pacific cod is 77,900 mt, which is a 16,600 mt decrease from the 1990 TAC. The 1991 TAC for

sablefish is 22,500 mt, a 3,500 mt decrease from 1990. The sum of the 1991 TACs for the flatfish species is 57,000 mt, which is a 7,000 mt decrease from the summed 1990 TACs of 64,000 mt. The 1991 sum of TACs for rockfish is 24,523 mt, which is a 5,647 mt decrease from the sum of the 1990 TACs of 30,170 mt.

Actual catches in 1991 are expected to reach 1991 TACs for sablefish, rockfish, Pacific cod, and pollock. The TACs for sablefish, rockfish, flatfish, and Pacific cod are reduced from 1990. If the pollock TAC is increased, most of the pollock catch will be with pelagic trawls.

Halibut bycatch is important in all bottom-trawl fisheries. Halibut bycatch could still be constraining in bottom-trawl fisheries for rockfish, Pacific cod, and sablefish. The sablefish hook-and-line fishery is expected to be delayed until May 15, 1991, so that halibut can escape into water depths shallower than those where the sablefish fishery is conducted.

#### (C) Expected Changes in Groundfish Stocks

Reductions in the groundfish TACs listed above have resulted from new stock assessments based on decreased biomass estimates for rockfish, Pacific cod, and sablefish as shown by the 1990 bottom-trawl survey. Conversely, the increased pollock TAC, if approved and implemented, results from an increased biomass estimate. Except for reduced abundance of rock sole, which is a component of shallow-water flatfish, all flatfish species are at high levels of abundance. A full discussion of these changes is contained in the final SAFE report.

#### (D) Current Estimates of Halibut Biomass and Stock Condition

The most current stock assessment of halibut biomass from the IPHC indicates that the total exploitable biomass of Pacific halibut available in 1990 was 232.9 million pounds (105,624 mt). This amount represents a decline of 6 percent from 1989, which is consistent with the 5-6 percent annual decline observed in recent years. A substantial decline in recruitment (abundance of 8-year-old fish) was also noted for 1990, an observation that is consistent with cyclical patterns of recruitment that have occurred over the last 50 years. This year's 12-year-old age class continues to make up a large part of the catch and should continue to influence the catch for several more years. The low-recruitment exhibited in recent years in conjunction with an exploitation rate greater than the recommended 0.35 can be expected to contribute to a continued decline in the

overall stock at a rate of 5-15 percent over the next several years.

#### (E) Potential Impacts of Expected Fishing for Groundfish on Halibut Stocks and U.S. Halibut Fisheries

Impacts of the groundfish fishery on halibut stocks and the halibut fisheries will be constrained by the overall PSC mortality limit. The 1991 groundfish fisheries are expected to use the entire halibut PSC limit of 2,750 mt. According to the IPHC, the PSC limit will result in an equal amount of 2,750 mt being deducted from the directed halibut fishery quota. The effect of this deduction depends on the constant exploitable yield (CEY) as determined by the IPHC. The CEY represents about one-third of the exploitable biomass, based on an exploitation rate of 0.35. The allowable directed commercial catch is determined by subtracting recreational catch and waste and bycatch amounts from the CEY, and then providing the remainder to the directed fishery.

#### (F) Methods Available for, and Costs of, Reducing Halibut Bycatches in Groundfish Fisheries

Methods available for reducing halibut bycatch include (1) reducing amounts of groundfish TACs, (2) reducing the halibut bycatch rate through vessel incentive programs, (3) gear modifications, and (4) changes in groundfish fishing seasons. Reductions in groundfish TACs provide no incentives for fishermen to reduce bycatch rates. Costs that would be imposed on fishermen as a result of reducing TACs depends on species and amounts of groundfish foregone. For example, if the sablefish TAC were reduced by 1,497 mt, which is the amount foregone in the 1990 hook-and-line fishery when it was closed upon reaching the halibut PSC gear assignment, fishermen would forego \$2.3 million in gross revenue.

The Secretary has implemented regulations that require groundfish pots to have halibut exclusion devices to reduce halibut bycatches by that gear type. Amounts of halibut PSC that otherwise might have been caught by pots were then made available to trawl and hook-and-line gear, promoting the potential for increased groundfish catches.

The Council has also recommended that the Secretary delay the start of the sablefish hook-and-line fishery from April 1 to May 15. A proposed rule delaying the fishery is being published in the Federal Register. The purpose of the delay is to allow sufficient time for



most halibut to migrate into shallower water and thereby escape the sablefish fishery, which is primarily conducted in deep water.

Methods listed under (F) will be reviewed by NMFS and the Council to determine their effectiveness. Changes will be implemented, as necessary, in response to this review, either through regulatory or FMP amendments.

In keeping with the goals and objectives of the FMP to reduce halibut bycatches while providing opportunity to harvest the groundfish OY, the

Secretary has approved the assignments of 2,000 mt and 750 mt of halibut PSC mortality limits to trawl and hook-and-line gear, respectively. Although these limits will reduce the harvest quota for commercial halibut fishermen, the Secretary has determined that they will not result in unfair allocation to any particular user group. The Secretary recognizes that some halibut bycatch will occur in the groundfish fishery, but the proposed delay in the sablefish season and currently required changes in gear designs are intended to reduce

adverse impacts on halibut fishermen while promoting the opportunity to achieve the optimum yield from the groundfish fishery.

#### 7. Seasonal Apportionments of Halibut PSC Limits

Under § 672.20(f)(2)(iii), the Secretary is apportioning the halibut PSC limits based on recommendations from the Council (Table 6). Regulations specify that any overages or shortfalls in PSC catches will be accounted for in the next season only within the fishing year.

TABLE 6.—ALLOCATION OF HALIBUT PSC LIMITS BETWEEN GEAR TYPES

Trawl gear		Hook-and-line gear	
Dates	Amount (mt)	Dates	Amount (mt)
Jan. 1-Mar. 31	600 (30%)	Jan. 1-May 14	200 (25%)
Apr. 1-Jun. 30	600 (30%)	May 15-Aug. 31	500 (50%)
Jul. 1-Sep. 29	400 (20%)	Sep. 1-Dec. 31	50 (25%)
Sep. 30-Dec. 31	400 (20%)		
Total	2,000 (100%)		750 (100%)

As required by § 672.20(f)(2)(iii), the Secretary based his determinations about seasonal allocations of the halibut PSC limits on information found in the SAFE report, or as otherwise available, which is summarized as follows:

#### (A) Seasonal Distribution of Halibut

Adult halibut spawn in deep water during winter months, then migrate to shallow water in summer months and feed. They generally spawn in water 230-450 meters deep from November through March; the peak of spawning is in December and January. During April and May, halibut migrate onto the offshore banks in water 135-270 meters deep. During June through August, halibut are found in much shallower water, 45 meters or less. During September and October, halibut migrate back to deeper water for spawning.

The recommended seasonal trawl apportionments will accommodate intensive fishing for deep-water rockfish and flatfish species, which occurs during the first half of the fishing year when most halibut will be in deep water. These amounts also will accommodate intensive fishing for Pacific cod. Although Pacific cod is mostly a shallow-water species, some juvenile halibut in shallow water will be caught as bycatch in this fishery. The recommended seasonal hook-and-line apportionments will accommodate intensive fishing for sablefish starting on May 15. Even though halibut bycatches

should be markedly reduced after that date as halibut migrate into shallower water, the sablefish fishery is so valuable that the industry prefers to have substantial bycatch to support the sablefish fishery.

#### (B) Seasonal Distribution of Target Groundfish Species Relative to Halibut Distribution

Most of the groundfish species are found in deep water during winter when water temperatures are relatively warmer (4 °C) than temperatures in shallower water (1 °C). As detailed in the SAFE report, pollock, Pacific cod, shallow-water flatfish species, and certain rockfish species are in deep water during winter but generally at depths shallower than where halibut are found. In summer, these species are in the same shallow water as halibut.

In winter, deep-water flatfish, rockfish species, and sablefish are found in deep water with halibut and remain in deep water throughout the year, whereas halibut move to shallow water in summer. The Council's recommended larger first and second quarterly apportionments of the halibut PSC limit assigned to trawl gear will accommodate fishing for deep-water flatfish and rockfish species, as well as the Pacific cod fishery, which is in shallower water and has some halibut bycatch.

#### (C) Expected Halibut Bycatch Needs on

#### a Seasonal Basis Relevant to Changes in Halibut Biomass and Expected Catches of Target Groundfish Species

Although sablefish, rockfish, Pacific cod, and flatfish TACs are lower in 1991 than in 1990, only catches of sablefish and rockfish will be reduced. Because catches of Pacific cod and flatfish will probably be greater in 1991 than in 1990, halibut bycatch mortality will probably not be lowered, even though halibut are less abundant in 1991 than in 1990. The entire 2,750-mt halibut PSC limit is expected to be caught.

The Council has recommended that a proportionally larger halibut PSC be available to support trawl fishing during the first and second quarters. Most of the trawl share of the halibut PSC limit is expected to be needed during the first two quarters. During this time, substantial trawl effort will be directed at Pacific cod after the pollock fishery is closed. The TAC for pollock is also allocated quarterly. The Council has recommended that the second quarter pollock fishery in the Gulf of Alaska be delayed until June 1, when the Bering Sea pollock fishery will reopen. Should the Secretary implement the Council's recommendation, trawl fishing effort would be directed at Pacific cod, flatfish, and rockfish before June 1. Halibut bycatch mortality while trawling for deep-water species of flatfish and rockfish could be proportionately higher and require a



larger proportion of the halibut seasonal allocation at this time.

Less halibut PSC is needed for trawl fisheries for Pacific cod during the third quarter because trawl fishing for this species will be minimal when the fish are dispersed. Most of the Pacific cod TAC will likely have been harvested before the fourth quarter. Nonetheless, some PSC could be needed to harvest the remaining Pacific cod TAC and to continue fishing for flatfish. The latter will probably be the principal species category available during the fourth quarter.

The Council recommended that the sablefish hook-and-line fishery be delayed until May 15. Although halibut bycatch rates are expected to be lower after May 15, hook-and-line fishermen have requested that substantial amounts of the halibut PSC be allocated to support the sablefish fishery because it is so valuable to them. The Secretary is implementing the Council's recommendation for the seasonal apportionments of the halibut PSC to gear types. The seasonal apportionments will support all hook-and-line fisheries, not just the sablefish fishery.

#### (D) Expected Variations in Bycatch Rates Throughout the Fishing Year

Halibut bycatch rates will vary with the seasonal distribution of halibut. During winter months when halibut are in deep water, groundfish fisheries for deep-water species will result in higher halibut bycatch rates. Fisheries for shallow-water species will result in lower halibut bycatch rates. This situation will be reversed during summer months when halibut are in shallower water. For a given amount of effort, higher bycatch rates would be expected in summer when halibut commingle with shallow-water species, such as Pacific cod, and in winter when halibut commingle with deep-water species, such as sablefish. Nonetheless, the Council's recommended large first and second quarterly apportionments to trawl gear and large second trimester apportionment to hook-and-line gear reflect expected increases in bycatch rates resulting from higher catches per unit of effort in trawl fisheries for Pacific cod and hook-and-line fisheries for sablefish, respectively.

#### (E) Expected Changes in Directed Groundfish Fishing Seasons

As of the date of this notice, the only changes in the groundfish fishing seasons are those for the sablefish hook-and-line fishery and for the pollock trawl fishery. The Council has recommended that the sablefish hook-

and-line fishery be delayed until May 15. It also recommended that the second quarter pollock fishery be delayed until June 1. Should the Secretary implement the Council's recommendation for the sablefish hook-and-line fishery, a substantial amount of halibut PSC is expected to be needed starting May 15. Because halibut bycatch is relatively minor in the pollock fishery, the Council's recommended season change for pollock is not a major factor for the Secretary's consideration of halibut PSC management.

#### (F) Expected Start of Fishing Effort

Fishing started for most groundfish species on January 1 or soon thereafter. Fishing with trawl, hook-and-line, and pot gear for Pacific cod also started in early January because Pacific cod are aggregated into spawning schools, promoting good catch rates. Trawling for rockfish species started in January. Trawling for pollock started in late January on roe-bearing stocks and will peak in February when roe quality is optimal. Trawling for flatfish will probably be spread throughout the year. Hook-and-line fishing for sablefish will start on May 15, assuming the Secretary implements the Council recommendation for season delay.

#### (G) Economic Effects of Establishing Seasonal Halibut Allocations on Segments of the Target Groundfish Industry

The manner in which PSC limits are seasonally apportioned will affect the amount of groundfish OY that will be harvested during a season. Ideally, the seasonal apportionment of halibut PSC limits will provide the means for each fishery to exploit fully the available resource without exceeding the PSC limits for each gear group.

Expressed in pounds and round weight, the resulting shortfall in 1990 was 3.3 million pounds of sablefish that, at \$0.69 per pound, cost fishermen about \$2.3 million in gross revenue.

Hook-and-line fishermen could have also continued to harvest Pacific cod if the closure had not occurred in 1990. The proportion of the total Pacific cod TAC they had harvested before the closure was 8.8 percent. Assuming this proportion, the amount of Pacific cod forgone is 2,600 mt, or 5.7 million pounds round weight. At \$0.20 per pound, hook-and-line fishermen could have lost \$1.1 million in gross revenue.

After the trawl fisheries were closed November 21, 1990, after reaching the PSC limit for halibut, 50,000 mt of groundfish remained unharvested. Lacking market incentives, some groundfish would not have been

harvested, regardless of the closure. About 20,000 mt of Pacific cod remained, and because market demand was strong in 1990, fishing for Pacific cod likely would have continued. At \$0.20 per pound round weight for Pacific cod, trawl fishermen could have lost \$8.8 million in gross revenue. A fuller discussion of economic effects is contained in the SAFE report.

#### Public Comments

Written comments were requested to be submitted to the Regional Director on or before December 10, 1990. No written comments were received by the Regional Director on the proposed 1991 specifications.

#### Other Matters

This action is taken under § 611.92 and § 672.20 and complies with Executive Order 12291. The Secretary finds that the purpose of the reserves is to save portions of the TAC in case they were needed by DAP later in the fishing year rather than apportioning them to JVP or TALFF at the beginning of the fishing year. Because the best available information indicates that DAP will harvest all the TAC amounts, no JVP or TALFF specifications have been established. Providing an opportunity for public comment on the apportioning of reserves before actually apportioning them would serve no purpose when no JVP or TALFF has been established. This adjustment is effective February 25, 1991. Comments are invited on the reserve apportionments for 15 days after the date of filing of this notice.

#### List of Subjects

##### 50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

##### 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: February 25, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

[FR Doc. 91-4824 Filed 2-25-91; 8:45 am]

BILLING CODE 3510-22-M

##### 50 CFR Part 672

[Docket No. 901184-1042]

#### Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.



**ACTION:** Notice of closure to directed fishing in the Gulf of Alaska area; request for comments.

**SUMMARY:** The Director, Alaska Region, NMFS (Regional Director), has determined that the shares of the total allowable catch (TAC) amounts for (1) sablefish allocated to trawl gear in the Western and Central Regulatory Areas of the Gulf of Alaska and for (2) the shortraker/rougheye rockfish category in the Eastern Regulatory Area for the 1991 fishing year are needed as bycatch amounts to support directed fisheries in those areas for remaining groundfish species. The Secretary of Commerce (1) is prohibiting directed fishing for sablefish by vessels using trawl gear in the Western and Central Regulatory Areas of the Gulf of Alaska and (2) is prohibiting directed fishing for shortraker/rougheye rockfish by all gear in the Eastern Regulatory Area of the Gulf of Alaska, from noon, Alaska local time (A.L.T.), February 25, 1991, through midnight, A.L.T. December 31, 1991. This action is necessary to prevent the trawl shares of sablefish in the Western and Central Regulatory Areas and the TAC for the shortraker/rougheye category in the Eastern Regulatory Area from being exceeded before the end of the fishing year. The intent of this action is to ensure optimum use of all groundfish and not exceed allowable catches of sablefish and shortraker/rougheye rockfish.

**DATES:** Effective: noon, A.L.T., February 25, 1991, through midnight, A.L.T., December 31, 1991. Comments are invited on or before March 13, 1991.

**ADDRESSES:** Comments should be mailed to Dale Evans, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

**FOR FURTHER INFORMATION CONTACT:** Jessica A. Gharrett, Resource Management Specialist, NMFS, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan for the Gulf of Alaska Groundfish Fishery (FMP) governs the groundfish fishery in the exclusive economic zone within the Gulf of Alaska management area under the

Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

Under § 672.20(c)(2), if the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery is the TAC, as defined in § 672.20(c)(1)(i). In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached, he will prohibit directed fishing for that species or species group in the specified regulatory area or district.

The 1991 specifications of TACs of groundfish in the Gulf of Alaska were filed with the Federal Register on February 25, 1991. The TAC for sablefish in the Western Regulatory Area is 2,925 metric tons (mt), and 585 mt is specified for trawl gear. For the Central Regulatory Area, the TAC for sablefish is 10,575 mt, and 2,115 mt is specified for trawl gear. The TAC for the shortraker/rougheye category in the Eastern Regulatory Area is 580 mt.

The Regional Director has determined that the entire trawl gear shares of sablefish in the Western and Central Regulatory Areas will be necessary as bycatch to support the main directed groundfish fisheries in those regulatory areas. With this action, the Regional Director (1) is establishing a directed fishing allowances of 0 mt sablefish for trawl gear and (2) is closing the directed fisheries for sablefish taken with trawl gear in the Western and Central Regulatory Areas. After the closure, in accordance with the standards for directed fishing (§ 672.20(g)(1)), amounts of sablefish retained on board trawl vessels in the Western and Central Regulatory Areas must be less than the total of (1) 15 percent of the aggregate amount of deepwater flatfish species

and all rockfish species of the genera *Sebastes* and *Sebastolobus*, plus (2) 5 percent of the total amount of all other fish species, all as measured in round weight equivalents, retained on board the vessel at the same time during the same trip.

The Regional Director has also determined that the entire TAC for the shortraker/rougheye rockfish category in the Eastern Regulatory Area (580 mt) will be necessary as bycatch to support the main groundfish fisheries in that area. Therefore, he is establishing a directed fishing allowance of 0 mt, and is closing all directed fishing for the shortraker/rougheye rockfish category in the Eastern Regulatory Area, effective noon, A.L.T., February 25, 1991. After the closure, in accordance with § 672.20(g)(3), amounts of the shortraker/rougheye rockfish group retained must be less than 20 percent of the amount of all other fish species, all as measured in round weight equivalents, retained at the same time by the vessel during the same trip.

#### Classification

This action is taken under § 672.20 and is in compliance with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on this notice or to delay its effective date. The immediate effectiveness of this notice is to prevent the TACs for sablefish in the Western and Central Regulatory Areas of Alaska and for shortraker/rougheye rockfish in the Eastern Regulatory Area of the Gulf of Alaska from being exceeded; however, interested persons are invited to submit comments in writing to the address on or before March 13, 1991.

#### List of Subjects in 50 CFR Part 672

Fish, Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 21, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-4825 Filed 2-25-91; 5:06 pm]

BILLING CODE 3510-22-M



# Proposed Rules

Federal Register

Vol. 56, No. 41

Friday, March 1, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 90-ANE-36]

#### Airworthiness Directives: Air Cruisers Company, TSO-C69 Evacuation Slide System, Part Number (P/N) D31005-( ) and D30543-( )

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Air Cruisers Company TSO-C69 Evacuation Slide Systems, which would require certain modifications to the Air Cruisers Evacuation Slides P/N D31005-( ) and D30543-( ). This proposal is prompted by an evacuation slide having failed to deploy correctly as a result of an incorrectly routed slide valve release cable. This condition, if not corrected, could result in an evacuation slide not inflating properly and hampering an emergency evacuation of the aircraft.

**DATES:** Comments must be received no later than April 10, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 90-ANE-36, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, or delivered in duplicate to room 311 at the above address.

Comments may be inspected at the above location in room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Air Cruisers Co., P.O. Box 180, Belmar, NJ 07719-0180. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington,

Massachusetts 01803-5299, or the New York Aircraft Certificate Office, 181 South Franklin Avenue, room 202 Valley Stream New York 11581.

#### FOR FURTHER INFORMATION CONTACT:

Mr. D. Kramar, Aerospace Engineer, Systems and Equipment Branch, ANE-173, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 181 South Franklin Avenue, room 202 Valley Stream, New York 11581; telephone no. (516) 791-6427.

#### SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rule Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 90-ANE-36." The postcard will be date/time stamped and returned to the commenter.

#### Discussion

The FAA has determined that an unsafe condition exists on airplanes equipped with certain Air Cruisers Co. TSO-C69 Emergency Evacuation Slide Systems P/N D31005-( ) and D30543-( ). British Aerospace in BAe-146 Inspection Service Bulletin 25-198, dated June 30, 1990, has reported improper or incomplete deployment of these slides.

Investigation by British Aerospace and Air Cruisers Co. disclosed cases where an evacuation slide had failed to deploy correctly as a result of an incorrectly routed slide valve release cable.

The FAA has reviewed and approved Air Cruisers Co., Service Bulletin 201-25-13, dated September 17, 1990, which describes procedures necessary to replace the evacuation system's inflation cable and reidentify the evacuation slide.

Since this condition is likely to exist or develop on other emergency evacuation slides of this same TSO approved design, an AD is proposed which would require that certain Air Cruisers Evacuation Slides, P/N D31005-( ) and D30543-( ) be modified in accordance with the service bulletin previously described.

There are approximately 939 slides of the affected design in the worldwide fleet. It is estimated that it will cost approximately \$60 for the kits, and that it would take approximately 0.3 manhours per slide at \$40 per manhour. Based on these figures the total cost impact of the AD is estimated to be \$67,608.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.



**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Air Cruisers Co.:** Applies to Air Cruisers Co., TSO-C69 Emergency Evacuation Slide Systems P/N D31005-( ), Serial Numbers 0001 through 0870 and P/N D30543-( ), Serial Numbers 0001 through 0067, installed on, but not limited to British Aerospace Model BAe-146 series airplanes.

Compliance is required within the next 3 months after the effective date of this AD, unless already accomplished.

To prevent the possibility of the emergency evacuation slides from inflating improperly which could result in hinderance of the emergency evacuation of the airplane, accomplish the following:

(a) Replace the inflation cable, and reidentify the emergency evacuation slides in accordance with paragraph 2, of the Accomplishment Instructions of Air Cruisers Co., Service Bulletin (SB) 201-25-13, dated September 17, 1990.

(b) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance time specified in this AD may be approved by the Manager, New York Aircraft Certification Office, ANE-170, Engine & Propeller Directorate, Aircraft Certification Service, FAA, 181 South Franklin Avenue, Valley Stream, New York 11581.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Air Cruisers Co., P.O. Box 180, Belmar, New Jersey 07719-0180. This document may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts, or the New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

Issued in Burlington, Massachusetts, on February 13, 1991.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91-4751 Filed 2-28-91; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

[Docket No. 91-ANE-06]

**Airworthiness Directives; Pratt & Whitney Canada (PWC) PT6A Series Turboprop Engines**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD) applicable to certain PWC PT6A series turboprop engines, which would require removal of the compressor delivery air line (P3) filter assembly. This proposal is prompted by aircraft flight test results which have revealed an engine configuration and a set of operating conditions where engine acceleration is insufficient to provide for required aircraft balked landing performance. This condition, if not corrected, could result in the aircraft's inability to safely perform the required balked landing maneuver.

**DATES:** Comments must be received no later than April 15, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 91-ANE-06, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, or deliver in duplicate to room 311 at the above address.

Comments may be inspected at the above location in Room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G 1A1, or may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

**FOR FURTHER INFORMATION CONTACT:** Marc J. Bouthillier, Engine Certification Office, ANE-142, Engine and Propeller

Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (617) 273-7080.

**SUPPLEMENTARY INFORMATION:**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91-ANE-06." The postcard will be date/time stamped and returned to the commenter.

**Discussion**

Recent aircraft flight test results have revealed an engine configuration and a set of operating conditions where engine acceleration is insufficient to provide for required aircraft balked landing performance. It has been determined that installation of a P3 filter on engine installations utilizing an inflight low idle in the 51% core rotational speed range, can increase engine acceleration time such that the aircraft balked landing performance required by Federal Aviation Regulation (FAR), part 23, Paragraphs 23.75(d), 23.77 and 23.143(a)(5), cannot be achieved. This condition, if not corrected, could result in the aircraft's inability to safely perform the balked landing maneuver as required by the noted FAR paragraphs.

Since this condition is likely to exist or develop on other engines of the same



type design, an AD is proposed which would require removal of the P3 filter assembly from certain PWC PT6A series engines installed on certain Beech Aircraft Corporation (BAC) aircraft.

There are approximately 4,330 affected PT6A series engines in the U.S. fleet. Pratt & Whitney Canada has advised the FAA that it would assume the parts and labor cost to remove the subject filter assemblies from affected engines. Consequently, there should be no cost impact on U.S. operators for parts or labor.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations (FAR) as follows:

#### PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

**Pratt & Whitney Canada:** Applies to Pratt & Whitney Canada (PWC) PT6A-6, PT6A-6/C20, PT6A-20, PT6A-20A, PT6A-21, PT6A-27, PT6A-28, PT6A-34, PT6A-34B, and PT6A-36 turboprop engines installed on Beech Aircraft Corporation Models 65-90, 65-A90, 65-A90-1, 65-A90-2, 65-A90-3, 65-A90-4, 99, 100, 99A, B90, C90, C90A, E90, H90, A99, A99A, B99, and C99 aircraft.

Compliance is required within the next 180 days after the effective date of this AD, unless already accomplished.

To prevent excessive engine acceleration time which could result in aircraft inability to safely perform the balked landing maneuver required by FAR part 23, §§ 23.75(d), 23.77 and 21.143(a)(5), accomplish the following:

(a) Perform a visual inspection to determine if a compressor delivery air line (P3) filter assembly has been installed on the engine.

**Note:** The compressor delivery air line assembly may have been installed on the engine as original equipment, or may have been installed per any of the following PWC Service Bulletins: 1205, 1253, 1290, 1294, 1330, 1343, or 1378.

(b) Remove from service, if installed, the P3 filter assembly defined in (a) above.

**Note:** The engine compressor delivery air line assembly can be returned to an approved configuration without a P3 filter. For information, refer to the applicable PWC Maintenance Manual and Parts Catalog.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD, or adjustments to the compliance schedule specified in this AD, may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G 1A1. These documents may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

Issued in Burlington, Massachusetts, on February 13, 1991.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc 91-4752 Filed 2-28-91; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF JUSTICE

### 28 CFR Part 11

[Order No. 1477-91]

### Debt Collection; Tax Refund Offsets

**AGENCY:** Department of Justice.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Justice proposes to amend Part 11 of Title 28 of the Code of Federal Regulations by modifying procedures for referring debts that have been reduced to judgment or are legally enforceable to the Secretary of the Treasury for collection by offset against Federal income tax refunds. This regulation is intended to contain safeguards for the debtor while strengthening the ability of the Department to collect outstanding debts.

**DATES:** Comments must be received by April 1, 1991.

**ADDRESSES:** Comments should be sent to Imogene McCleary, United States Department of Justice, Debt Collection Management, Justice Management Division, room 1121, 10th Street and Constitution Avenue NW., Washington, DC 20530.

**FOR FURTHER INFORMATION CONTACT:** Imogene McCleary, United States Department of Justice, Debt Collection Management, Justice Management Division, room 1121, 10th Street and Constitution Avenue NW., Washington, DC 20530; (202) 514-5345. (This is not a toll-free number.)

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 2653 of the Deficit Reduction Act of 1984, 26 U.S.C. 6402(d) and 31 U.S.C. 3720A, authorizes the Secretary of the Treasury to offset a delinquent debt owed to the Federal Government from the income tax refund due a taxpayer when other collection efforts have failed to recover the amount due. The purpose of the Act is to improve the ability of the Government to collect money owed it while adding certain notice requirements and other protections for the debtor.

The Department published an interim final rule to implement section 2653 of the Act on March 9, 1989 (54 FR 9979), in accordance with regulations issued by the Secretary of the Treasury (Treasury) at 28 CFR 301.6402-6T (1990). Treasury's rules for offsets against tax refund are limited to the period January 1, 1986 through January 10, 1994. The interim rule allows the Department to use the procedures described in the rule to obtain tax offsets to collect outstanding



debts from individuals in favor of the United States by referring to the Department of the Treasury for tax refund offset by the Internal Revenue Service (IRS) final civil judgments containing money awards and final criminal judgments that include fines and/or other assessments of money.

The proposed rule would expand the coverage of tax refund offset procedures to enforce debt collection by (1) broadening the scope of coverage of these procedures to include, in addition to individual debtors, organizations and entities not currently covered, and (2) allowing referral to the Department of the Treasury for collection of both debts that are past due and legally enforceable but not reduced to judgment, and debts that have been reduced to judgment. The proposed rule would be substituted for the interim rule published on March 9, 1989.

The legislative history of section 2653 of the Deficit Reduction Act (set out in the United States Code Annotated as a note under section 6402 of title 26, Internal Revenue Code) indicates that nothing in that section shall be construed as exempting debts of corporations or any other category of persons from the section's applicability. The proposed rule will extend authority to the Department to refer debts of organizations and entities, in addition to those of individuals, to the Department of the Treasury for collection by tax refund offset. Current Department of the Treasury regulations and the participation agreement between the Department and IRS governing referrals to IRS for tax refund offset do not provide for referrals for offset of debts owed by organizations and entities. Accordingly, the Department does not intend to exercise its authority to refer such debts until the Treasury Department issues regulations and modifies the participation agreement governing use of tax offset procedures to collect claims from organizations and entities.

Offset is permitted for "past due, legally enforceable" obligations that have not been reduced to judgment, in addition to those that have been reduced to judgment. For past due, legally enforceable debts that have not been reduced to judgment, the proposed rule permits debtors to inspect records, present evidence and contentions, and secure an administrative review regarding the past due status, existence, amount, and legal enforceability of the debt to be collected. For debts that have been reduced to judgment, the debtor may present evidence regarding the current amount owed or evidence that

the judgment has been satisfied or stayed.

The proposed regulation for offset of past due debts allows for the collection of any legally enforceable debt not reduced to judgment, when the legally enforceable non-judgment debt has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made, and for judgment debts delinquent for any length of time. This is consistent with Treasury's rules. See 26 CFR 301.6402-6T(b).

A debt becomes eligible for tax refund offset procedures if it cannot currently be collected pursuant to the salary offset procedures of 5 U.S.C. 5514(a)(1) (individual has retired or resigned before collection of the amount of the indebtedness is completed) and is ineligible for administrative offset under 31 U.S.C. 3716(a), or cannot currently be collected by administrative offset under 31 U.S.C. 3716(a) by the referring agency. The taxpayer (individual, organization or entity) will be provided with notice that the Department plans to refer the taxpayer's debt to the Secretary of the Treasury for offset of any Federal tax refund, and will be provided 65 days in which to present evidence that all or part of the debt is not past due, that the amount is not the amount currently owed, that the outstanding debt has been satisfied, or, in the case of a debt reduced to judgment, that the amount owed has been satisfied or that judgment has been stayed.

The Treasury Department's regulation provides that debts that may be referred to IRS for refund offset must first have been disclosed by the referring agency to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless the debt amount is less than \$100. 26 CFR 301.6402-6T(b)(6). Section 3720A of title 31 requires a 60-day notice period and an opportunity for an administrative review of the debt. The Department adopts the same procedures for reporting delinquent debts to consumer reporting agencies (credit bureaus) as are used for tax refund offsets. Thus, the Department may provide a single notice and an opportunity for review applicable to both the enforcement actions of reporting the debt to a consumer reporting agency and initiating the tax refund offset.

Because securing evidence of the date of receipt of the notice is costly and potentially time consuming and the Department considers five days an adequate period for notices to be delivered by mail, the rule allows five mailing days in addition to the statutory

minimum of 60 days from the date of the notice of proposed offset within which the taxpayer may present evidence. The date of the notice is the date shown on the notice letter as its date of issuance. Use of the notice date rather than its receipt will eliminate confusion and disputes regarding calculation of the 60 day period required by the statute.

If the taxpayer does not pay the amount due or present evidence that the amount is not past due or satisfied, or, for debts reduced to judgment, that the debt has been satisfied or stayed, the Department will report the debt to a consumer reporting agency at the end of the notice period and refer the debt to the Department of the Treasury for offset of the taxpayer's Federal tax refund. If the taxpayer responds to the notice by disputing the existence or amount of the debt, the Assistant Attorney General for Administration will review the evidence presented by the debtor and determine whether to terminate efforts to offset the debt, modify the amount to be referred or refer for offset the amount stated in the notice. The Assistant Attorney General for Administration will notify the debtor of this decision in writing. There is no appeal of this decision.

#### Other Matters

This is not a major rule within the meaning of section 1(b) of Executive Order 12291. The Department certifies that this regulation will not have a significant economic impact on a substantial number of small entities. These procedures will only apply to named individuals, organizations, or units of state or local government. Thus, the regulation will not affect any small entities. Accordingly, this rule is exempt from requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

This rule requires debtors to submit information if they wish to dispute an offset. This information requirement is part of an administrative action that begins when the Department sends a notice to a particular party as required by section 11.16. Therefore, this collection is exempt from the requirements of the Paperwork Reduction Act of 1980. 5 CFR 1320.3(c).

#### List of Subjects in 28 CFR Part 11

Claims, Debt collection, Government contracts, Government employees, Income taxes, Lawyers.

By virtue of the authority vested in me as Attorney General by 31 U.S.C. 3720A and 28 U.S.C. 301, 509 and 510, part 11 of title 28 of the Code of Federal Regulations is proposed to be amended as follows:



**PART 11—DEBT COLLECTION**

1. The authority citation for part 11 is revised to read as follows:

**Authority:** 28 U.S.C. 301, 509, 510, 31 U.S.C. 3718, as amended by Pub. L. 99-578, 31 U.S.C. 3720A.

2. Part 11 is proposed to be amended by revising subpart C to read as follows:

**Subpart C—IRS Tax Refund Offset Provisions for Collection of Debts**

Sec.

11.10 Scope.

11.11 Definitions.

11.12 Procedures.

**Subpart C—IRS Tax Refund Offset Provisions for Collection of Debts**

**§ 11.10 Scope.**

Section 2653 of the Deficit Reduction Act of 1984, 26 U.S.C. 6402(d) and 31 U.S.C. 3720A, authorizes the Secretary of the Treasury to offset a delinquent debt owed to the Federal Government from the income tax refund due a taxpayer when other collection efforts have failed to recover the amount due. The purpose of the Act is to improve the ability of the Government to collect money owed it while adding certain notice requirements and other protections for the debtor. This subpart authorizes the collection of debts due the Federal Government owed by persons, organizations or entities by offset of refunds due to the debtor by the Internal Revenue Service (IRS). It allows referral to the Secretary of the Treasury for collection of debts which are past due and legally enforceable but not reduced to judgment and those that have been reduced to judgment.

**§ 11.11 Definitions.**

(a) *Debt.* Debt means money owed by an individual, organization or entity from sources which include loans insured or guaranteed by the United States and all other amounts due the U.S. from fees, leases, services, overpayments, civil and criminal penalties, damages, interest, fines, administrative costs and all other similar sources. A debt becomes eligible for tax refund offset procedures if it cannot currently be collected pursuant to the salary offset procedures of 5 U.S.C. 5514(a)(1) and is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2), or cannot currently be collected by administrative offset under 31 U.S.C. 3716(a) against amounts payable to the debtor by the Department of Justice. A non-judgment debt is eligible for tax refund offset procedures if it has been delinquent for at least three months but has not been delinquent for more than

ten years at the time the offset is made. Judgment debts are eligible for referral for any length of time.

(b) *Past Due.* Any accelerated debt or any judgment debt is past due for the purpose of this section, and remains past due until paid in full. An unaccelerated debt is past due if, at the time of the notice required by § 11.12, any part of the debt has been due, but not paid for at least 90 days. Such an unaccelerated debt remains past due until paid to the current amount of indebtedness.

(c) *Notice.* Notice means the information sent to the debtor pursuant to § 11.12. The date of the notice is the date shown on the notice letter as its date of issuance.

(d) *Dispute.* A dispute is a written statement supported by documentation or other evidence that all or part of an alleged debt is not past due or legally enforceable, that the amount is not the amount currently owed, that the outstanding debt has been satisfied, or, in the case of a debt reduced to judgment, that the judgment has been satisfied or stayed.

**§ 11.12 Procedures.**

(a) The Department may refer any past due, legally enforceable non-judgment debt of an individual, organization or entity to the Secretary of the Treasury for offset when the debt has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made. Debts reduced to judgment may be referred beyond ten years from the date of delinquency. Debts in amounts lower than \$25.00 are not subject to referral.

(b) The Department will provide the debtor with written notice of its intent to offset before initiating the offset. Notice will be mailed to the debtor at the current address of the debtor, as determined from information obtained from the IRS' prior year's tax records or from information regarding the debt maintained by the Department of Justice. The notice sent to the debtor will state the amount of the debt and inform the debtor that:

- (1) The debt is past due;
- (2) The Department intends to refer the debt to the Secretary of the Treasury for offset from income tax refunds that may be due to the taxpayer;
- (3) The Department intends to provide information concerning the delinquent debt exceeding \$100 to a consumer reporting bureau (credit bureau); and
- (4) The debtor is being provided 65 days from the date of notice in which to present evidence that all or part of the debt is not past due, or to present

evidence that the amount is not the amount currently owed, or to show that the outstanding debt has been satisfied, or, if a judgment debt, that the debt has been satisfied or stayed, before the debt is reported to a consumer reporting agency and referred to the Secretary of the Treasury for offset from income tax refunds.

(c) If the debtor does not pay the amount due or present evidence that the amount is not past due or satisfied or stayed, the Department will report the debt to a consumer reporting agency at the end of the notice period and refer the debt to the Secretary of the Treasury for offset of the taxpayer's Federal tax refund.

(d) A debtor may request a review by the Department if the debtor believes that all or part of the debt is not past due or legally enforceable, or, in the case of a judgment debt, that the debt has been stayed or the amount satisfied, as follows:

- (1) The debtor must send a written request for review to the address provided in the notice.
- (2) The request must state the amount disputed and the reasons why the debtor believes that the debt is not past due, is not legally enforceable, has been satisfied, or, if a judgment debt, that the debt has been satisfied or stayed.
- (3) The request must include any documents which the debtor wishes to be considered or state that additional information will be submitted within the time permitted.
- (4) If the debtor wishes to review records establishing the nature and amount of the debt, the debtor must request review in writing. The office holding the relevant records shall make them available for inspection during normal business hours.
- (5) The request for review and any additional information submitted pursuant to the request must be received by the Department at the address stated in the notice within 65 days of the date of issuance of the notice.

(6) The Department will review disputes and shall consider any documentation and arguments submitted by the debtor and the agency's records. A decision that any disputed portion of the debt is eligible for referral to the Secretary of the Treasury shall be made by an official not involved in the original decision to offset the debt. Such individual shall be either the Assistant Attorney General for Administration or someone in a position at least one supervisory level above the official who made the decision to offset the debt. The Department shall send a written notice



of the decision to the debtor. There is no appeal of this decision.

(7) Any debt which previously has been reviewed pursuant to this section or any other section of this part, or which has been reduced to a judgment, may not be disputed except on the grounds of payments made, or events occurring subsequent to the previous review or judgment.

(e) The Department will notify IRS of any change in the amount due promptly after receipt of payments or notice of other reductions.

(f) In the event that more than one debt is owed, the IRS refund offset procedure will be applied in the order in which the debts became past due.

(g) The authority of the Assistant Attorney General for Administration may be redelegated to subordinate officials as appropriate.

Dated: February 20, 1991.

Dick Thornburgh,  
Attorney General.

[FR Doc. 91-4724 Filed 2-28-91; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 658

[Docket No. 910244-1044]

RIN 0648-AD24

#### Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

**SUMMARY:** NOAA issues this proposed rule to implement Amendment 5 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). This proposed rule would (1) change from June 1 to May 15 the commencement date of the closure to trawl fishing of the exclusive economic zone (EEZ) off Texas (Texas closure) and extend the maximum allowable Texas closure to 90 days; and (2) remove seabobs and rock shrimp from management under the FMP, except for the recordkeeping and catch reporting requirements. The intended effects of this rule are to allow flexibility in the dates of the Texas closure so that juvenile brown shrimp may be adequately protected and to remove from the management unit those species of shrimp not in need of Federal management.

**DATES:** Written comments must be received on or before April 15, 1991.

**ADDRESSES:** Copies of Amendment 5, which includes a Regulator Impact Review and an Environmental Assessment, may be obtained from the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 881, Tampa, FL 33609. Comments on the proposed rule should be sent to Michael E. Justen, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Michael E. Justen, 813-893-3722.

**SUPPLEMENTARY INFORMATION:** The shrimp fishery of the Gulf of Mexico is managed under the FMP, prepared and amended by the Gulf of Mexico Fishery Management Council (Council), and its implementing regulations at 50 CFR part 658, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 5 to the FMP proposes to revise the commencement date and allow for a longer period for the annual Texas closure. Currently, the closure is from June 1 through July 15, but the opening and closing dates may be adjusted by as much as 15 days. Fishery biologists have found that brown shrimp in the warmer waters of the southern coastal estuaries of Texas grow more quickly and move into the Gulf of Mexico earlier than their cohorts in the northern estuaries. To allow these shrimp to grow to a larger, more valuable size, closure of the EEZ to trawling may be required earlier than May 17, the earliest date currently allowable under the Federal regulations. Closure through July 15 may still be necessary to protect the later emigrating brown shrimp from the northern estuaries. Accordingly, Amendment 5 proposes a closing date of May 15 and an opening date of July 15. These closing and opening dates may be adjusted in accordance with the criteria specified in the FMP and its implementing regulations, but the closure may not be less than 45 days or more than 90 days. Closures and openings would commence at 30 minutes after sunset on the specified dates. These changes are compatible with the closure dates and times for the waters of Texas and will enhance compliance with and enforcement of both Federal and State regulations.

Amendment 5 also proposes to delete management of seabobs and rock shrimp under the FMP. There are no measures in the implementing regulations that restrict the harvest of seabobs and rock shrimp. The recordkeeping and reporting requirements relating to seabobs and rock shrimp would remain in effect.

Amendment 5 contains definitions of overfishing for brown, pink, and royal red shrimp, as required by 50 CFR 602.11(c), and specifies actions to be taken if recruitment overfishing of brown or pink shrimp occurs. Additional information on the proposed definitions and actions is contained in Amendment 5, the availability of which was announced in the Federal Register on February 13, 1991 (56 FR 5792).

#### Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a regional fishery management council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 5, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review (RIR), which concludes that Amendment 5, if adopted, (1) would have minimal economic effects; and (2) would not have a significant economic impact on a substantial number of small entities. Compatibility of the closure dates between state waters and the EEZ will ease enforcement and will increase the number of juvenile brown shrimp allowed to grow to a larger, more valuable size.



Accordingly, the General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities; and a regulatory flexibility analysis was not prepared.

The Council prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. A copy of the EA may be obtained at the address listed above and comments on it are requested.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. This determination has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Texas does not participate in the coastal zone management program.

A consultation conducted in accordance with section 7 of the Endangered Species Act concluded that this action would not adversely affect populations of endangered/threatened species such as sea turtles, as long as the current Turtle Excluder Device regulations remain in effect.

This proposed rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implication sufficient to warrant preparations of a federalism assessment under E.O. 12612.

#### List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 5, 1991.

Samuel W. McKeen,  
Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 658 is proposed to be amended as follows:

#### PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 658 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 658.1, paragraph (b) is revised to read as follows:

##### § 658.1 Purpose and scope.

(b) The regulations in this part govern fishing for brown shrimp, white shrimp, pink shrimp, and royal red shrimp by vessels of the United States in the EEZ of the Gulf of Mexico. In addition, the regulations in this part govern recordkeeping and reporting for the above-mentioned shrimp and for seabobs and rock shrimp that are caught in the EEZ of the Gulf of Mexico or adjoining state waters, or landed in a Gulf of Mexico coastal state.

3. In § 658.6, paragraph (a) introductory text is revised to read as follows:

##### § 658.6 Vessel identification.

(a) *Official number.* Each vessel of the United States that takes brown shrimp, white shrimp, pink shrimp, or royal red shrimp in the Gulf of Mexico EEZ must:

4. Section 658.20 is revised to read as follows:

##### § 658.20 Fishing year.

The fishing year for brown shrimp, white shrimp, and pink shrimp begins on May 1. The fishing year for royal red shrimp begins on January 1.

5. In § 658.21, paragraphs (a) and (b) are revised to read as follows:

##### § 658.21 Allowable levels of harvest.

(a) *Catch quotas.* The domestic quota for royal red shrimp harvested from the EEZ is 111.6 metric tons. There are no domestic quotas for brown shrimp, white shrimp, or pink shrimp harvested from the EEZ.

(b) *State waters.* These regulations do not limit the harvest of brown shrimp, white shrimp, pink shrimp, or royal red shrimp in water landward of the EEZ. However, harvests from waters landward of the EEZ are taken into account in the calculations of maximum sustainable yield and optimum yield for those shrimp species.

6. In § 658.25, paragraph (a) and paragraph (b) introductory text are revised to read as follows:

##### § 658.25 Texas closure.

(a) *Area and season restrictions.* From 30 minutes after sunset on May 15 to 30 minutes after sunset on July 15, the area described in this paragraph is closed to all trawl fishing, except that a vessel may fish for royal red shrimp beyond the 100-fathom depth contour. The area is that part of the EEZ off Texas west of a line connecting point A at 29°32.1'N. latitude, 93°47.7'W. longitude, to point B at 26°11.4'N. latitude, 92°53.9'W. longitude (see Figure 4).

(b) *Adjustment of dates.* The Regional Director may adjust the closing or opening date to provide an earlier, later, shorter, or longer closure, but the duration of the closure may not exceed 90 days or be less than 45 days.

7. Section 658.26 is revised to read as follows:

##### § 658.26 Size restrictions.

There are no minimum size restrictions for brown shrimp, pink shrimp, or royal red shrimp harvested in the EEZ. White shrimp harvested in the EEZ are subject to the minimum-size landing and possession limits of Louisiana when possessed within the jurisdiction of that State.

[FR Doc. 91-4851 Filed 2-26-91; 2:57pm]

BILLING CODE 3510-22-M



## Notices

Federal Register

Vol. 56, No. 41

Friday, March 1, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

### ARMS CONTROL AND DISARMAMENT AGENCY

#### The President's General Advisory Committee on Arms Control and Disarmament; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following Presidential Committee meeting:

*Name:* General Advisory Committee on Arms Control and Disarmament.

*Date:* April 8-9, 1991.

*Time:* 8:30 a.m.

*Place:* State Department Building, Washington, DC.

*Type of Meeting:* Closed.

*Contact:* Robert M. Meissner, Executive Director, General Advisory Committee on Arms Control and Disarmament, room 5927, Washington, DC., 20451. (202)-647-5178.

*Purpose of Advisory Committee:* To advise the President, the Secretary of State, and Director of the Arms Control and Disarmament Agency respecting matters affecting arms control, disarmament, and world peace.

*Agenda:* The Committee will review specific national security policy and arms control issues. Members will be briefed on current START, CFE and CW negotiations, current events in the Persian Gulf, status of chemical demilitarization verification and technology. An Executive Session will be held.

*Reason for Closing:* The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

*Authority to Close Meeting:* The closing of this meeting is in accordance with a determination by the Director of the Arms Control and Disarmament Agency dated December 5, 1990, made pursuant to the provisions of section 10(d) of the Federal Advisory Committee Act as amended.

*William J. Montgomery,*

*Committee Management Officer.*

[FR Doc. 91-4874 Filed 2-28-91; 8:45 am]

BILLING CODE 6820-32-M

### DEPARTMENT OF AGRICULTURE

#### Agricultural Stabilization and Conservation Service

#### Feed Grain Donations for the Affiliated Tribes of the Fort Berthold Indian Reservation of North Dakota

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Affiliated Tribes of the Fort Berthold Indian Reservation of North Dakota have been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Affiliated Tribes of the Fort Berthold Indian Reservation of North Dakota for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the tribes will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing land of the tribes to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the tribes utilizing such lands. These donations by the CCC may commence upon February 15, and shall be made available through May 16, or such other date as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, DC on February 22, 1991.

*John A. Stevenson,*

*Acting Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc. 91-4919 Filed 2-28-91; 8:45 am]

BILLING CODE 3410-05-M

### CIVIL RIGHTS COMMISSION

#### California Advisory Committee to the Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 7 p.m. and adjourn at 10 p.m. on March 15, 1991, at the Miyako Hotel, 1625 Post Street, San Francisco, California 94115. The purpose of the meeting is to update the Committee on the state university system and the border violence project, and to review other Committee programs.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Michael C. Carney or Philip Montez, Director of the Western Regional Division, (213) 894-3437, TDD (213) 894-0508. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, February 21, 1991.

*Carol-Lee Hurley,*

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 91-4808 Filed 2-28-91; 8:45 am]

BILLING CODE 6335-01-M

### DEPARTMENT OF COMMERCE

#### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of the Census.

*Title:* Respondent Opinion Survey for the Plant and Equipment Expenditures Survey.

*Form Number(s):* PE-7.

*Agency Approval Number:* None.

*Type of Request:* New collection.

*Burden:* 75 hours.

*Number of Respondents:* 150.



*Avg Hours Per Response:* 30 minutes.

*Needs and Uses:* The Respondent Opinion Survey is part of an integrated research plan developed to improve performance of the Plant and Equipment Expenditures (P&E) Survey. The research plan was submitted to OMB in the Fall of 1990 as part of a request for reclearance of the P&E Survey. The Respondent Opinion Survey fulfills that part of the research plan designed to study why 27 percent of the companies in the P&E Survey have not responded during the past year. By categorizing reasons for nonresponse into "controllable" and "noncontrollable" factors, we should be able to determine an upper limit for response and be better able to determine what specific actions will be effective to improve response.

*Affected Public:* Businesses or other for-profit organizations.

*Frequency:* One-time only.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 25, 1991.

Edward Michals,  
Departmental Clearance Officer, Office of  
Management and Organization.

[FR Doc. 91-4870 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-07-M

## Bureau of Export Administration

### Automated Manufacturing Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held March 26, 1991, 9:30 a.m. in the Herbert C. Hoover Building, room 1629, 14th Street & Pennsylvania Avenue, NW., Washington, DC. The meeting is called on short notice due to the unanticipated results of recent negotiations of COCOM (Coordinating Committee for Multilateral Export Controls). The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to

automated manufacturing equipment and related technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 377-2583.

Dated: February 23, 1991.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 91-4868 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-DT-M

## Foreign-Trade Zones Board

[Docket 38-90]

### Proposed Foreign-Trade Zone—Fort Wayne, Indiana Amendment to Application

Notice is hereby given that the application submitted by the City of Fort Wayne, Indiana, requesting authority to establish a general-purpose foreign-trade zone at three sites in Fort Wayne, Indiana, has been amended to increase Site 1 from 9,600 square feet to 14,400 square feet within the warehouse facility located at 3402 Meyer Road, and Site 2 from 10,000 square feet to 17,500 square feet within the warehouse facility at 2122 Bremer Road. The application remains otherwise unchanged.

The comment period is reopened until April 1, 1991.

The application and amendment material are available for public inspection at the following locations:

Department of Economic Development,  
840 City-County Building, One Main  
Street, Fort Wayne, Indiana 46802.  
Office of the Executive Secretary,  
Foreign-Trade Zones Board, U.S.  
Department of Commerce, room 4213,  
14th & Pennsylvania Avenue NW.,  
Washington, DC 20230.

Dated: February 22, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-4866 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 9-91]

### Proposed Foreign-Trade Zone for Madawaska (Aroostook County), Maine, and Subzone for Northern Trading Company, Inc. (Toiletries/Cosmetics Plant), Madawaska; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Madawaska Foreign-Trade Zone Corporation (a private not-for-profit corporation), requesting authority to establish a general-purpose foreign-trade zone in the town of Madawaska, Aroostook County, Maine, within the Madawaska Customs port of entry, and for subzone status at the toiletries and cosmetics packaging and manufacturing plant of Northern Trading Company, Inc. (NTC), in Madawaska. It was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400), and was formally filed on February 15, 1991. The applicant is authorized to make this proposal under title 5, section 13062 of the Maine Revised Statutes Annotated.

The proposed general-purpose zone would be located at a warehousing complex owned and operated by NTC at 190-202 East Main Street (U.S. Route 1), Madawaska, within 1.5 miles of the U.S. Customs office at the border crossing on the St. John River, opposite Edmundston, New Brunswick, Canada. The facility is on a 6.5 acre site which contains a series of interconnected one- and two-story buildings covering some 29,000 square feet.

Zone authority is being requested to aid local economic development and revitalization efforts in northern Maine. Several firms have expressed an interest in using zone procedures for warehousing/distribution of products including liquor and merchandise used in gift sets. No specific manufacturing approvals are being sought for the general-purpose zone site at this time.



Such requests would be made to the Board on a case-by-case basis.

The proposed subzone would be located at the cosmetics and toiletries plant of NTC, located on U.S. Route 1, some 2 miles east of the general-purpose zone site, Madawaska, Maine. The company is involved in contract packaging and manufacturing for fragrance and cosmetics companies (colognes, perfumes, deodorants, body lotions and other cosmetics and toiletries). The finished products are generally classified under HTS Headings 3303, 3304 and 3307 (duty range 0.0%-9.0%). NTC receives components and materials (including containers and packaging) from domestic and foreign sources. Among the items sourced abroad are:

- Finished toiletries and cosmetics (HTS Headings 3303, 3304, 3307—0.0-9.0%)
- Odiferous substances and mixtures (HTS Heading 3202—4.1%-4.7% + 11¢/Kg)
- Perfume bottles with stoppers (HTS Heading 7013—9%)
- Containers for perfume or other toilet preparations (HTS Heading 7010—3.7%-7.5%)
- Scent sprayers (HTS Heading 9616—3.7%)
- Cartons and pkg. material (HTS Headings 3923/4819—2.8%-5.3%)

Zone procedures would exempt foreign items used in products which are exported from Customs duty payments. On products sold in the U.S. market, duties would be paid at the finished product rate (0-6%) when applicable. The duty rates on the components/containers range from 3.7 to 9.0 percent. The application notes the existence of increasing foreign competition in this industry and indicates that the savings resulting from zone procedures will help improve the Madawaska plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Edward A. Goggin, Assistant Regional Commissioner of Customs, U.S. Customs Service, Northeast Region, suite 801, 10 Causeway Street, Boston, MA 02222-1056; and Colonel Philip R. Harris, Division Engineer, U.S. Army Engineer Division, New England, 424 Trapelo Road, Waltham, MA 02254-9149.

As part of its investigation, the examiners committee will hold a public hearing on March 21, 1991, beginning at

10 a.m., at the Madawaska Public Safety Complex Building, Conference Room (second floor), 344 East Main Street, Madawaska, Maine.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by March 14, 1991. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through April 22, 1991.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Area Port Director, U.S. Customs Service, 2 Bridge Street, Madawaska, Maine 04756.  
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 4213, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: February 22, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-4865 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-DS-M

## International Trade Administration

[A-583-008]

### Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan; Final Results of an Antidumping Duty Administrative Review and Determination not to Revoke in Part

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**ACTION:** Notice of final results of an antidumping duty administrative review and determination not to revoke in part.

**SUMMARY:** On November 5, 1990, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan. The review covers shipments of this merchandise to the United States by three producers/exporters from Taiwan during the period beginning May 1, 1987, and ending April 30, 1988.

We gave interested parties an opportunity to comment on the preliminary results and intent not to revoke in part. We received comments only from the petitioners. The final

dumping margins are unchanged from the preliminary results of the review.

**EFFECTIVE DATE:** March 1, 1991.

#### FOR FURTHER INFORMATION CONTACT:

Jonathan Freilich or Alain Letort, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793 or telefax (202) 377-1388.

#### SUPPLEMENTARY INFORMATION:

##### Background

On November 5, 1990, the Department of Commerce ("the Department") published in the *Federal Register* the preliminary results of its administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan (55 FR 46538). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

##### Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the Tariff Schedules of the United States, Annotated ("TSUSA") to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption, on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of certain circular welded carbon steel pipes and tubes. The Department defines such merchandise as welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch and 0.375 inch or more but not over 4½ inches in outside diameter. These products are commonly referred to in the industry as "standard pipe" and are produced to various American Society for Testing Materials specifications, most notably A-53, A-120, or A-135. Until January 1, 1989, this merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, and 610.3252 of the TSUSA. Standard pipe is currently classified under HTS item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. As was the case with the TSUSA numbers, the HTS numbers are provided for convenience and



customs purposes. The written product description remains dispositive.

The review covers three manufacturers/exporters of certain circular welded carbon steel pipes and tubes during the period May 1, 1987 through April 30, 1988.

#### Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and intent not to revoke in part. We received comments only from the petitioners, the Standard Pipe Subcommittee of the Committee on Pipe and Tube Imports and its individual members.

#### Comment 1

Petitioners contend that reviewing all Special Summary Steel Invoices ("SSSI") from the named respondents for entries of the subject merchandise during the review period is an insufficient basis for finding that there were no shipments by any of the respondents.

#### Department's Position

The Department did not limit itself to a simple review of SSSI data in its effort to ascertain that there were no entries of the subject merchandise from Taiwan during the review period. In addition to conducting a thorough search of all SSSI's collected by the Department on shipments of all pipe and tube by all producers and exporters that were entered during the review period, we requested Customs to report any shipments of the subject merchandise made by the named respondents to the United States during the review period. Customs reported no entries from any of the named respondents during the period, and the Department found no entries in the SSSI data during the period by any of the named respondents or by resellers or trading companies. We have no reason to believe, therefore, that any shipments of the subject merchandise by the named respondents or by resellers or trading companies entered the commerce of the United States during the review period.

#### Comment 2

Petitioners assert that respondents failed to disclose whether they had made sales to unrelated intermediaries outside the United States that the respondents knew at the time of the sale were destined for the U.S. market. Petitioners argue that the Department, given this lack of information, should have sent the respondents a list of the exporters of the merchandise under review and required the respondents to

report all sales of the merchandise to those exporters.

#### Department's Position

As noted in the response to comment 1, the Department has no reason to believe that there were any shipments of the subject merchandise by unrelated intermediaries or exporters during the review period. Therefore, there was no need for the Department to solicit any further information from the respondents.

#### Final Results of the Review

Based on our analysis, the final results, unchanged from the preliminary results, are as follows:

Manufacturer/ exporter	Time period	Ad valorem margin (percent)
An Mau Steel Co., Ltd.	05/01/87-04/30/88	1 0.66
Far East Machinery Co., Ltd.	05/01/87-04/30/88	1 0.00
Yieh Hsing Enterprise Co., Ltd.	05/01/87-11/16/88	1 0.00

<sup>1</sup> No shipments during the period. Rates noted are from the last antidumping duty administrative review in which there were shipments.

A cash deposit of estimated antidumping duties based on the above margin shall be required for An Mau Steel Co., Ltd. No cash deposit shall be required for shipments from the Far East Machinery Co. Ltd. or Yieh Hsing Enterprises Co. Ltd. ("Yieh Hsing"). For any shipments of this merchandise produced or exported by any producers and/or exporters not covered in this review but covered in a previous review, the cash deposit rate will continue to be at the rate published in the final results of the last administrative review for these firms. For any shipments of this merchandise produced or exported by producers and/or exporters not covered in this or a previous review, the Customs Service will require a cash deposit of 0.66 percent *ad valorem*. Similarly, for any future entries of this merchandise from a new producer and/or exporter not covered in this or prior administrative reviews, whose first shipment occurred after April 30, 1988, and which is unrelated to the reviewed firms or any previously reviewed firm, the Customs Service will require a cash deposit of 0.66 percent *ad valorem*. These deposit requirements shall remain in effect for all shipments of circular welded carbon steel pipes and tubes from Taiwan which are entered, or withdrawn from warehouse, for consumption, until publication of the

final results of the next administrative review.

#### Determination Not to Revoke in Part

Yieh Hsing requested a partial revocation of the order based on the fact that it had no sales at less than fair value for two years. Under the regulations applicable to this case [19 CFR 353.54 (1988)], the Department must be "satisfied that there is no likelihood of sales at less than fair value" in order to revoke an antidumping duty order. On November 5, 1990, the Department published its intent not to revoke the order in part with respect to Yieh Hsing and invited interested parties to comment (55 FR 46538). The Department was not satisfied that there was no likelihood of sales at less than fair value because of Yieh Hsing's history of selling pipe and tube products at less than fair value in the United States and its strong incentive to shift its production from light-walled rectangular tube, recently placed under order, to circular pipes and tubes. We received no comments on our intent. The Department, therefore, has determined not to revoke in part the antidumping order with respect to Yieh Hsing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act [19 U.S.C. 1675(a)(1)] and § 353.22 of the Commerce Department's regulations (19 CFR 353.22).

Dated: February 21, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import  
Administration.

[FR Doc. 91-4867 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-807]

#### Postponement of Preliminary Antidumping Duty Determinations: Oscillating Fans and Ceiling Fans From the People's Republic of China

AGENCY: Import Administration,  
International Trade Administration,  
Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce is postponing its preliminary determinations in the antidumping duty investigations of oscillating fans and ceiling fans from the People's Republic of China (PRC). The statutory deadline for issuing these preliminary determinations is now no later than May 29, 1991.

EFFECTIVE DATE: March 1, 1991.



**FOR FURTHER INFORMATION CONTACT:**

Bradford Ward (202/377-5288) or Steven Lim (202/377-4087), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** On November 20, 1990, the Department initiated antidumping duty investigations of oscillating fans and ceiling fans from the People's Republic of China. The notice stated that we would issue our preliminary determinations on or before April 9, 1991. (55 FR 49320, November 27, 1990).

The Department has determined that these investigations are "extraordinarily complex" under section 733(c)(1)(B) of the Tariff Act of 1930, as amended (the Act). Accordingly, we are postponing the preliminary determinations until not later than May 29, 1991.

We determine that these cases are extraordinarily complicated because (1) They involve a large number of respondents, most of which are part of a complex related entity involving exporters, importers and/or foreign affiliated companies; and (2) a variety of novel methodological issues have been raised. There are a variety of complex ownership, production, and selling arrangements. The PRC's status as a non-market economy has been challenged with respect to the industries under investigation. Not all of the respondents in these investigations are majority PRC-owned and controlled, but in fact are majority-owned by non-PRC entities and claim that they are independent of the government of the PRC. We have determined that the parties concerned are cooperating and that additional time is necessary to make preliminary antidumping duty determinations.

For these reasons, we determine that these investigations are extraordinarily complicated in accordance with section 733(c)(1)(B)(i) (II) and (III) of the Act and that additional time is necessary to make these preliminary determinations in accordance with section 733(c)(1)(B)(ii) of the Act. The statutory deadline for issuing these determinations is now no later than May 29, 1991.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: February 22, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-4864 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-549-401]

### Certain Apparel From Thailand Intent To Revoke Countervailing Duty Order

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of intent to revoke countervailing duty order.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on certain apparel from Thailand. Interested parties who object to this revocation must submit their comments in writing not later than March 31, 1991.

**EFFECTIVE DATE:** March 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Lorenza Olivas or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 12, 1985, the Department of Commerce (the Department) published a countervailing duty order on certain apparel from Thailand (48 FR 9818). The Department has not received a request to conduct an administrative review of the countervailing duty order on certain apparel from Thailand for more than four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

##### Opportunity To Object

Not later than March 31, 1991, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to revoke by March 31, 1991, we shall conclude that the order is no longer of interest to

interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: February 22, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 91-4863 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-535-001]

### Cotton Shop Towels From Pakistan; Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of preliminary results of countervailing duty administrative review.

**SUMMARY:** The Department of Commerce has conducted an administrative review of the countervailing duty order on cotton shop towels from Pakistan for the period January 1, 1989 through December 31, 1989. We preliminarily determine the total bounty or grant to be 8.63 percent *ad valorem*. We invite interested parties to comment on these preliminary results.

**EFFECTIVE DATE:** March 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Christopher Beach or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 28, 1990, the Department of Commerce (the Department) published in the *Federal Register* a notice of "Opportunity to Request Administrative Review" (55 FR 11417) of the countervailing duty order on cotton shop towels from Pakistan (49 FR 8974; March 9, 1984). On March 30, 1990, Milliken & Company, the petitioner, requested an administrative review of the order. We published the initiation on April 27, 1990 (55 FR 17792). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). The Department published the final results of the last administrative review on April 12, 1989 (54 FR 14671).

##### Scope of Review

Imports covered by this review are shipments of Pakistani cotton shop towels. During the review period, such



merchandise was classifiable under item number 6307.10.20 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Custom purposes. The written description remains dispositive.

The review covers the period January 1, 1989 through December 31, 1989, and five programs.

#### Analysis of Programs

##### (1) Export Financing

The Export Finance Scheme (EFS), which is administered by the State Bank of Pakistan, grants short-term loans at below-market interest rates to exporters. The EFS has two parts. Under part I, exporters may obtain financing on specific letters of credit or irrevocable contracts. Under part II, exporters may establish a credit line based on 33 percent of the previous year's exports. During the current year, a company must export merchandise for a total value equivalent to three times the amount of financing obtained under Part II. The exports used to obtain financing under Part I do not satisfy the export performance requirement under Part II. If exports fall short of the Part II requirement, there is an interest penalty of 20 percentage points. Because this program provides loans only to exporters at less than commercial rates, we preliminarily determine that it is countervailable.

During the review period, shop towel exporters made interest payments on loans obtained under Parts I and II of the EFS. The loans had an interest rate of 6 percent, and the term of the loans varied from three to twelve months. We used as our commercial benchmark the average lending rate of 14 percent reported in the questionnaire response.

To calculate the benefit, we took the difference between the actual interest paid and the interest that would have been paid if the loans were obtained at commercial rates. Since EFS loans can be tied to exports to specific countries, we divided each firm's interest benefit on loans obtained for exports to the United States by the value of its exports to the United States. We then weight-averaged the result by each firm's share of total exports of the subject merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 2.86 percent *ad valorem* during the review period.

##### (2) Excise Tax, Sales Tax and Customs Duty Rebate Programs

The Central Bureau of Revenue administers the rebate of excise taxes, customs duties and sales taxes on both

domestic and imported inputs used in exported products. During the review period, the excise tax rebate was 3.80 percent, the sales tax rebate was 0.11 percent, and the customs duty rebate was 0.37 percent. All the rebates were calculated on the basis of the f.o.b. value of exports.

The Government of Pakistan failed to provide any documentation linking the amount of these rebates to actual indirect taxes borne in the production of shop towels. Therefore, we preliminarily determine that the Government of Pakistan pays these rebates without regard to specific duties and taxes incurred in the production of shop towels and that the full amount of the rebates is countervailable because the rebates are contingent upon export performance.

These cash rebates are earned on a sale-by-sale basis, and a firm can precisely calculate the amount of rebate it will receive for each export sale at the moment the sale is made. Because the amount of these rebates is known at the time of export, we calculate the benefit from these programs on a credit-as-earned basis. Using the rates applicable to cotton shop towel exports during the review period, we preliminarily determine the benefit from these programs to be 4.28 percent *ad valorem* during the review period.

##### (3) Income Tax Reductions

The Government of Pakistan provides firms with a maximum 50-percent reduction of taxes on income generated from exports. The percentage of the reduction depends on the size of the company and the form of business ownership. Because this program is contingent upon export performance, we preliminarily determine that it is countervailable.

Thirteen companies used this program during the review period. For eight companies that provided incomplete information concerning their benefits under this program, we used as the best information available the highest income tax reduction benefit reported in the questionnaire response for a shop towel producer. On this basis, we preliminarily determine the benefit to be 1.49 percent *ad valorem* during the review period.

##### (4) Other Programs

We examined the following programs and preliminarily determine that exporters of cotton shop towels did not use them during the review period: a. Import Duty Rebates; and b. Export Credit Insurance.

#### Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 8.63 percent *ad valorem* during the period January 1, 1989 through December 31, 1989.

The Department intends to instruct the Customs Service to assess countervailing duties of 8.63 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1989 and on or before December 31, 1989.

Further, the Department intends to instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 8.63 percent of the f.o.b. invoice price on all merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under § 355.38(c), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: February 22, 1991.

Eric I. Garfinkel,  
Assistant Secretary for Import  
Administration.

[FR Doc. 91-4862 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-D9-M



**Steel Tubes: Short Supply Determination**

**AGENCY:** Import Administration/ International Trade Administration, Commerce.

**ACTION:** Notice of short-supply review and request for comments; certain steel tubes.

**SUMMARY:** The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 2,122 metric tons of certain steel axle tubes for the remainder of 1991 under Article 7 of the U.S.-EC Steel Pipe and Tube Arrangement.

**SHORT-SUPPLY REVIEW NUMBER:** 43.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, published in the Federal Register on January 12, 1991, 55 FR 1348 ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply determination is under review with respect to certain steel tubes for use in the manufacture of axles and trailer frames for trailer manufacturers. On February 21, 1991, the Secretary received an adequate petition from AL-KO Kober Corporation ("AL-KO") requesting a short-supply allowance for 2,122 metric tons of this material for the remainder of 1991 under Article 7 of the Arrangement Between the European Economic Community and the Government of the United States of America Concerning Trade in Steel Pipes and Tubes. AL-KO has requested short supply for this material because it has been unable to obtain this material domestically and its potential foreign suppliers do not have quota available to meet AL-KO's needs.

The requested material consists of four sizes of custom shaped asymmetrical hexagonal tubes and five sizes of trilobe tubes. The two shapes of tubing are complimentary and used together to form a unified axle.

The exact sizes, grades and quantity requested of each tube is as follows:

**HEXAGONAL TUBES**

Size(mm)	Steel grade	Quantity (metric tons)
62x3 .....	SAE 1012 or 1020.	31
80x3 .....	SAE 1012 or 1020.	69

**HEXAGONAL TUBES—Continued**

Size(mm)	Steel grade	Quantity (metric tons)
97x4 .....	SAE 1012 or 1020.	538
120x5 .....	SAE 1012 or 1020.	691

**TRILOBE TUBES**

41x4 .....	SAE 1513 or ROPS Steel.	6
56x4.7 .....	QSTE 460 TM	42
66x5.6 .....	SAE 1513 or ROPS Steel.	61
66x7.1 .....	SAE 1513 or ROPS Steel.	234
84x8 .....	HSLA 60 or ROPS Steel.	450

The hexagonal tubes are welded but have smoothed outer seams. The cross-section of the 120x5 mm hexagonal tube consists of one 105 degree angle and two 100 degree angles, between which are 140 degree angles, in alternating order. The 140 degree angles tend to be sharper than the other angles, which are more rounded. The cross-section of the 97x4 mm hexagonal tube and the 80x3 mm hexagonal tube consists of three 96 degree angles, between which are two 144 degree angles and one 149 degree angle, in alternating order. The 144 degree and 149 degree angles tend to be sharper than the other angles, which are more rounded. The cross-section of the 62x3 mm hexagonal tube consists of three 90 degree angles, between which are three 150 degree angles, in alternating order. The 150 degree angles tend to be sharper than the other angles, which are more rounded.

The trilobe tubes are welded, but have smoothed outer seams. The cross-section of the trilobe tubes are essentially rounded equiangular, equilateral triangles comprised of three equiangular lobes. Each of the three lobes is a bell-shaped, rounded curve, the sides of which form a 60 degree angle. Between the bell-shaped lobes are shallow, U-shaped curves, the sides of each of which form a 120 degree angle.

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding

years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than March 21, 1991.

**COMMENTS:** Interested parties wishing to comment upon this review must send written comments not later than March 8, 1991, to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after March 8, 1991. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

**FOR FURTHER INFORMATION CONTACT:** Marissa Rauch or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377-1382 or (202) 377-0159.

Eric I. Garfinkel,  
Assistant Secretary for Import Administration.

[FR Doc. 91-5029 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-DS-M



## National Oceanic and Atmospheric Administration

### The 1991 State/Federal Natural Resource Damage Assessment and Restoration Planning Activities for the Exxon Valdez Oil Spill

**AGENCY:** National Oceanic and Atmospheric Administration  
Department of Law, State of Alaska.

**ACTION:** Advance notice of the 1991 natural resource damage assessment and restoration planning for the Exxon Valdez Oil Spill.

**SUMMARY:** This Notice announces that the Federal/State Natural Resource Trustee Council is in the process of preparing the 1991 Natural Resource Damage Assessment and Restoration Planning for the Exxon Valdez Oil Spill and notifies the public that the proposed 1991 plan will be available for public review and comment by early April. Responses to the public comments received concerning the 1990 Federal/State Plan will also be made available. This notice invites requests for copies of the 1991 Federal/State Natural Resource Damage Assessment and Restoration Planning.

**DATES:** Requests for Copies of the proposed 1991 plan should be received no later than April 1, 1991.

**ADDRESSES:** All requests must be written and submitted to the following address: Trustee Council, P.O. Box 22755, Juneau, Alaska 99802.

**FOR FURTHER INFORMATION CONTACT:** U.S. Forest Service Office of Public Affairs, (907) 586-8806.

**SUPPLEMENTARY INFORMATION:** The March 24, 1989, *Exxon Valdez* resulted in the discharge of approximately 11 million gallons of North Slope crude oil into Alaska's Prince William Sound. The *Exxon Valdez* Oil Spill (EVOS) and subsequent clean up operations affected natural resources in the Sound and along the coasts of the Kenai Peninsula, Kodiak and the Alaska Peninsula.

The natural resources Trustees (the State of Alaska, National Oceanic and Atmospheric Administration, and the Departments of Agriculture and the Interior) and the Environmental Protection Agency (EPA) instituted a natural resource damage assessment process to estimate the damages as compensation for the injury, loss or destruction of natural resources and services, as a result of EVOS, and to provide for the restoration of those resources or services, as authorized under section 311 of the Clean Water Act and section 107 of the Comprehensive Environmental

Response, Compensation and Liability Act. The Trustees established a Trustee Council, based in Alaska, to manage the damage assessment and restoration processes. EPA is an advisor to the Trustees and the Trustee Council and has been designated by the President to coordinate the overall long-term restoration planning for the affected area on behalf of the Federal Trustees. The Trustees and EPA, through the Trustee Council, prepared the 1989 and 1991 Damage Assessment and Restoration Activity Plans.

The Trustee Council has completed preliminary analysis of data collected in the course of the 1989 and 1990 studies and, subject to available funding, has recommended to the Trustees a number of studies to be continued during the 1991 field season. The Trustee Council evaluated the studies considering the degree of injury indicated by their preliminary analysis of the data collected to date and the potential to identify further injury to the natural resources through additional study. In addition, each study was evaluated in terms of its interrelationship with other studies, its importance to determine the effects of EVOS in the Alaskan ecosystem, and its role in planning for restoration.

Previously collected data are currently being analyzed and verified to ensure accuracy before presenting them to the public for review. This is necessary due to the actual and potential litigation concerning injury, loss or destruction of natural resources. The Trustees intend to provide information to the public as data are compiled and scientifically reviewed, subject to litigation considerations. In addition, discussions between the State of Alaska, Federal Government and Exxon may result in the additional release of information to the public. The information made available to the public to date has been housed in the Oil Spill Public Information Center in Anchorage, Alaska.

The fact that some studies are proposed to be discontinued does not mean that the subject resource did not suffer injury. Where studies are being considered for discontinuation, the Trustee Council has determined that additional study will not be necessary or practical. Information gathered through these studies will be used, as appropriate, in the course of the damage assessment and restoration process.

Detailed descriptions of the 1990 studies are available in Volume I of "The 1990 Federal/State Natural Resource Damage Assessment and Restoration Plan for the Exxon Valdez Oil Spill". This plan, which is available

at the Oil Spill Public Information Center in Anchorage, was made available to the public on September 15, 1990. Similar to the 1990 Plan, the studies recommended for continuation in 1991 are grouped into the following categories: Marine Mammals, Terrestrial Mammals, Birds, Fish/Shellfish, Coastal Habitat (Intertidal), Technical Services, Archaeology, Economics and Restoration Planning. In addition, some studies in the 1990 Plan, including those under the category of Air/Water, are recommended for regrouping into a new category, Subtidal. The following is a summary of the studies recommended for the 1991 season:

#### Marine Mammals Studies

Marine Mammals Study No. 2 (Killer Whales) will continue, with emphasis upon Prince William Sound whales due to evidence of missing individual that were exposed to oil during the EVOS. This is an observation study, with visual tracking of pods and individuals since EVOS. Individuals are identified by comparison with past photo-identifications and a mortality rate is determined for the pods. This rate is compared with pre-spill mortality rates.

Surveys of harbor seals to count the number of adults and pups at oiled and unoled sites in Prince William Sound under Study No. 5 will continue. There is concern that the seals have adverse residual effects due to their exposure to oil. The completion of the toxicology and histology work on previously collected samples will continue to determine their exposure to hydrocarbons and the extent of injury to the seals' nervous systems. Additional collection of specimens is not contemplated.

The direct mortality of sea otters was highly visible immediately following EVOS. Study No. 6 (Sea Otters), will continue, with modifications, to gather data on population (mortality/lost production) and the physiological effects of oiling, i.e., sublethal conditions, decreased survival, and/or decreased production. Increased emphasis will be placed upon data analysis and integration and population modelling. Study No. 7, which assesses the fate of sea otters oiled and rehabilitated as a result of EVOS, will be incorporated into Study No. 6, for increased efficiency.

No further work in 1991 is recommended for Studies No. 1 (Humpback Whales) and 4 (Sea Lions). It does not appear that further study will assist in documenting additional injury due to the EVOS.



## Terrestrial Mammals

Terrestrial Mammal Study No. 3 (River Otters) will continue to collect data on population and latent effects of the EVOS. Otters may be experiencing nutritional stress. River otters in oiled and unoiled areas will be live-captured, and blood and body conditions will be analyzed and compared with earlier samples. The otters in established study areas will be monitored to detect changes in population size, survivorship, reproduction, home range size, food habits and activity patterns. Study No. 4 (Brown Bears) will continue at a much reduced level, with continued monitoring of radio-collared bears. An additional year of study will provide a more reliable quantification of mortality effects.

Studies Nos. 1 (Sitka Black-Tail Deer) and 2 (Black Bear) have been completed. Study No. 6 (Mink Reproduction) was discontinued during 1990, but, analysis of collected samples will be completed during 1991.

## Birds

Bird Study No. 1 (Water Birds/Beached Birds) will continue, but with a change of emphasis to complete analysis and examination of the samples and data collected during the first two years. This study will be modified to include a review and cataloging of carcasses collected immediately after EVOS to provide data valuable to other studies and to prepare specimens for eventual distribution to scientific institutions. The collected birds will be examined to verify body counts, species identification, degree of oiling and the condition of the carcasses. Tissue samples will be taken for further hydrocarbon analysis. Boat-based surveys of migratory birds to determine abundance and population trends (Bird Study No. 2B) will continue at a reduced level, but the aerial surveys (Study 2A) are no longer necessary. Bird Study No. 3 (Population Surveys of Seabird Colonies) will be continued, with increased emphasis placed upon the impact of EVOS upon nesting murres.

Bird Study No. 4 (Bald Eagles) will be modified to include additional documentation of the locations where eagles affected by the EVOS died. The telemetry work will continue to determine the winter survival rate of the currently instrumented eagles and additional blood and tissue samples will be taken to further document sublethal effects. Study No. 11 (Sea Ducks) will be modified in light of the data collected during 1989 and 1990 and will concentrate on completion of toxicology and histology on previous samples and

will also investigate reproductive status of ducks within oiled areas compared to unoiled areas.

Bird Studies Nos. 5 (Peregrine Falcons) and 13 (Passerines) have been completed.

## Fish/Shellfish

Study No. 1 (Salmon Spawning Area Injury) will continue and will map the distribution of spawners in 1991 relative to three intertidal spawning zones and upstream spawning areas and compare them to historical levels to determine the effect of EVOS on intertidal spawning stocks. Adult pink salmon returning in 1991 will represent the first opportunity to observe the abundance and spawning location of adult salmon exposed to oil as developing egg, alevin, and early marine fry and juveniles. Study No. 2 (Salmon eggs and Pre-emergent Fry) will continue to compare pink salmon egg mortality between oiled and unoiled areas. Fry abnormality will also continue to be compared between oiled and unoiled areas. An additional year of study will assist in determining long-term effects upon yearly spawning efforts. Study No. 3 (Salmon Coded Wire Tagging) will be modified to include only recovery of coded wire tags from returning wild and hatchery stocks to provide survival rates. Studies 4a and 4b (Early Marine Salmon Injury) will continue to document the effects of oil on fry growth.

Study No. 5 (Dolly Varden/Cutthroat Injury) will continue to document and compare growth and mortality rates of Dolly Varden and Cutthroat trout in oiled and unoiled areas. A modeling component is being added to estimate population effects and continued histopathological analyses will indicate oil-related effects. Study No. 11 (Herring Injury) will document egg mortality, gross abnormalities and genetic and cytological injury to herring. Study No. 13 (Clam Injury) will concentrate on the analysis of samples collected to date, rather than additional field work. Study No. 27 (Sockeye Salmon Over-escapement) will be continued to determine the effect of over-escapement upon the ecosystem documented in 1990. Study No. 28 (Run reconstruction) is a modelling exercise to determine specific stock abundance of pink salmon in Prince William Sound fishing districts to quantify the injuries, in terms of lost adults, indicated in other salmon studies. Study No. 30 (Salmon Database Management) will continue to create a data base of salmon information for use in the assessment studies and restoration activities.

Studies Nos. 15 (Shrimp Injury), 17 (Rockfish Injury) and 24 (Trawl

Assessment Outside Prince William Sound) are being modified and shifted to the Subtidal category. Studies Nos. 7a (Salmon Spawning, Lower Cook Inlet), 7b (Salmon Spawning, Kodiak/Chignik), 8a and 8b (Egg and Pre-emergent Fry, Lower Cook Inlet, Kodiak/Chignik), 18 (Trawl Assessment) and 22 (Crabs, Outside Prince William Sound) are completed, although analysis of the data collected will continue into 1991.

## Coastal Habitat Intertidal Study

This study will continue to document the effects of oil on the intertidal ecosystem. Analysis of the data gathered during the first two years of this study will continue. Continued sampling will concentrate exclusively on intertidal habitat. Biological experimentation work will continue in Herring Bay. Intertidal extrapolation will continue in Prince William Sound, Cook Inlet/Kenai, Kodiak Archipelago/Alaska Peninsula, but will concentrate on specific habitats of particular concern. Shallow benthic studies will be transferred to the Subtidal category of studies. Spectrographic monitoring of seaweeds will be discontinued.

## Subtidal

This category consists of modified studies previously identified under other categories and is intended to assess the presence and effect of oil in the subtidal ecosystem. Included are: Air/Water No. 2a (Hydrocarbon Exposure, Microbial and Meiofaunal Community Effects), Air/Water 2b and a segment of Coastal Habitat No. 1 (Injury to Benthic Communities), Air/Water No. 3 (Bio-availability and Transport of Hydrocarbons), Air/Water No. 6 (Sediment Toxicity Bioassays), Fish/Shellfish No. 15 (Injury to Shrimp), Fish/Shellfish No. 17 (Injury to Rockfish) and Fish/Shellfish No. 24 (Injury to Demersal Fish in Prince William Sound).

## Air/Water Studies

All 1990 studies are transferred to the Subtidal category of studies.

## Technical Services

Studies Nos. 1 (Hydrocarbon Analysis) and 3 (Mapping) are planned to continue, since both are essential to the assessment process. Technical Services Study No. 2 (Histopathology) was discontinued as a separate study in 1990 and the necessary histopathological analyses are to be conducted within the relevant studies.

## Archaeology

The Archaeological Survey, including field work to identify and quantify



injury to cultural resources and continued analysis, is recommended to continue. This study will identify archaeological and historical sites that have been affected by the EVOS.

#### Economics

Economic damage determination studies are continuing in 1991 with only minor modifications to the overall scope of the studies and to some of the individual work plans. Changes in scope and content reflect new information obtained during the previous year's work. Economics Studies Nos. 1 (Commercial Fishery Losses Caused by EVOS), 5 (Economic Damage To Recreation), 6 (Losses to Subsistence Households), 7 (Losses of Intrinsic Value Due to EVOS) and 8 (Economic Damage Assessment of Research Projects Affected by EVOS) will continue. Study No. 4 (Affects of EVOS on Public Lands) has been dropped from further consideration. Study No. 9 (Quantification of Damages to Natural Resources) did not commence in 1990, however; its implementation is anticipated this year. In addition, an assessment of possible damages caused by the EVOS's affect on petroleum prices is also under consideration for 1990.

#### Restoration Planning

Work will continue on the development of a comprehensive restoration plan. Potential restoration activities will be identified through technical reviews and public input. In some cases, evaluation of potential activities will require field studies to determine feasibility, provide needed biological and resource assessment information, or to monitor natural resource recovery times. Subject to additional technical review and availability of funds, some restoration studies and projects are expected to be carried out in 1991. These projects and the overall restoration planning process will be outlined in an upcoming *Federal Register* notice in the near future. Additional information on the Trustees' plan to implement restoration projects in 1991 was provided in the November 19, 1990, *Federal Register*, (55 FR 48160).

Other planning activities in 1991 will include development of a framework for a long-term comprehensive monitoring program and completion of reviews of the scientific literature on the recovery of species and ecosystems from environmental perturbations. There will also be consideration of additional public involvement activities, including workshops and publications.

Dated: February 26, 1991.

Thomas A. Campbell,

General Counsel, NOAA.

Charles E. Cole,

Attorney General, State of Alaska.

[FR Doc. 91-4886 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-12-M

#### Western Pacific Fishery Management Council; Addition of Meeting Agenda Items

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

An agenda, published in the *Federal Register* at 56 FR 7015, on February 21, 1991, for the Western Pacific Fishery Management Council's public meeting in Honolulu, HI, on February 27-March 1, 1991, has been amended. The amended agenda item is reprinted with revisions.

#### Amended Agenda Items

3. *Pelagics*: Discussion of the status of overfishing amendment #1; the status of the longline permit and logbook amendment #2; the status of the emergency moratorium on new entry into the Hawaii longline fishery; recommendations from the Task Force on NWHI longline/monk seal interactions, including a possible emergency closure to longlining of certain areas around the NWHI; recommendations from the workshop on transferability of permits; amendment #3 to establish a three-year moratorium on new entry into the Hawaii longline fishery; recommendations from the task force on gear conflict and allocation issues, including a possible emergency closure to longlining of certain areas around the Hawaiian Islands; and recommendations on preferential treatment for indigenous people.

All other information published at 56 FR 7015 remains unchanged. For further information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: February 25, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-4850 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-22-M

#### Patent and Trademark Office

#### Advisory Commission on Patent Law Reform: Open Meeting

**AGENCY:** Patent and Trademark Office, Department of Commerce.

**SUMMARY:** The Commission was established on August 23, 1990, to advise the Secretary of Commerce on the state of and need for any reform in the United States laws relating to the enforcement and the licensing of U.S. patents.

**TIME & PLACE:** March 26, 1991, 10 a.m. to 4 p.m., U.S. Department of Commerce, Office of the Secretary, 5th Floor, 14th Street and Constitution Avenue, NW., Washington, DC.

**AGENDA:** The meeting will be primarily organizational in nature, and will address the following topics:

- (1) Orientation of members as to the purposes and objectives of the Commission; and
- (2) Identification of issues to be considered by the Commission.

How the Commission can effectively address these issues (i.e., subcommittees, working groups, etc.) may also be addressed.

**PUBLIC OBSERVATION:** The meeting will be open to public observation. Approximately 10 seats have been reserved for the public. Reservations for these seats will be available on a first-come, first-served basis through the contact person indicated below. Written comments and suggestions will be accepted before or after the meeting on any of the agenda matters.

**FOR FURTHER INFORMATION CONTACT:** E. R. Kazenske, Executive Assistant to the Commissioner, Box 15, Patent and Trademark Office, Washington, DC 20231. Telephone: (703) 557-3071.

Dated: February 25, 1991.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91-4932 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-16-M

#### COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

**Negotiated Settlement and Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Mauritius**

February 25, 1991.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing and adjusting limits.

**EFFECTIVE DATE:** February 28, 1991.

**FOR FURTHER INFORMATION CONTACT:** Anne Novak, International Trade



Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

#### SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Mauritius agreed to extend the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated June 3 and 4, 1985, as amended, through September 30, 1992.

Also, the two governments agreed to establish specific limits for Categories 351/651 for the periods February 28, 1990 through September 30, 1990 and October 1, 1990 through September 30, 1991. The agreed level for the period October 1, 1990 through September 30, 1991 period is being increased by application of swing; reducing the current limit for Categories 342/642/842 to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see *Federal Register* notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 46238, published on November 2, 1990.

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

February 25, 1991

Commissioner of Customs, Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive dated October 29, 1990 concerning imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the period which began on October 1, 1990 and extends through September 30, 1991.

Effective on February 28, 1991, you are directed to establish and adjust limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Mauritius:

Category	Twelve-month limit <sup>1</sup>
351/651 .....	141,775 dozen
342/642/842 .....	169,440 dozen

<sup>1</sup> The limits have not been adjusted to account for any imports exported after September 30, 1990.

Imports charged to the category limit for Categories 351/651 for the period beginning February 28, 1990 and extending through September 30, 1990 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level established in this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 91-4869 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-DR-M

#### COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

##### Procurement List; Additions and Deletion

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to and deletion from Procurement List.

**SUMMARY:** This action adds to and deletes from the Procurement List commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

**EFFECTIVE DATE:** April 1, 1991.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** On September 28, November 16, December 28, 1990, and January 11, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 FR 39685, 47905, 53329 and 56 FR 1180/1) of proposed additions to and deletion from the Procurement List:

##### Additions

After consideration of the material presented to its concerning capability of qualified workshops to produce the commodities and provide the services at a fair market price and impact of the additions on the current or most recent contractors, the Committee has

determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR subpart 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

##### Commodities

*Pouch, Mechanic's Tool*

5140-00-329-4306

*Mask, Surgical*

6515-00-982-7493

(Remaining Government Requirement)

*Skirt, Womens*

8410-01-279-7730

8410-01-279-7731

8410-01-279-7732

8410-01-279-7733

8410-01-279-7734

8410-01-279-7735

8410-01-279-7736

8410-01-279-7737

8410-01-279-7738

8410-01-279-7739

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8410-01-279-7746

8410-01-279-7747

8410-01-279-7748

8410-01-279-7749

8410-01-279-7750

8410-01-279-7751

8410-01-279-7752

8410-01-279-7753

##### Services

*Janitorial/Custodial*

Federal Building, U.S. Post Office and Courthouse, Pine Bluff, Arkansas

*Janitorial/Custodial*

Federal Building, St. Maries, Idaho

*Janitorial/Custodial*

U.S. Army Reserve Center, Spartanburg, South Carolina

*Operation of Postal Service Center*

Robins Air Force Base, Georgia



This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

#### Deletion

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

Accordingly, the following commodity is hereby deleted from the Procurement List:

Strap, Mail Tray, P.S. Item No. 01067.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-4913 Filed 2-28-91; 8:45 am]

BILLING CODE 6820-33-M

#### Procurement List; Proposed Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed additions to procurement list.

**SUMMARY:** The Committee has received proposals to add to the Procurement List commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** April 1, 1991.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR subpart 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to the Procurement List:

#### Commodities

*Harness, Carrying*

1660-00-571-2239

*Strap, Fuel Tank*

2910-00-740-9419

*Gown, Surgical*

6532-00-083-6534

6532-00-083-6535

*Kit, Preventive Dentistry*

6520-00-890-2080

*Frame, Picture*

7105-00-052-8684

7105-00-052-8690

*Box, Wood*

8115-00-L00-1525 123 1/2" x 39 1/2"

8115-00-L00-1526 147 1/2" x 39 1/2"

8115-00-L00-1527 123 1/2" x 51 1/2"

8115-00-L00-1528 147 1/2" x 51 1/2"

8115-00-L00-1780 147 1/2" x 63 1/2"

8115-00-L00-1532 99 1/2" x 39 1/2"

8115-00-L00-1649 99 1/2" x 51 1/2"

(Requirements of the Defense Industrial Plant Equipment Center, Memphis, TN only)

*Cap, Garrison*

8405-01-232-5330

8405-01-232-5331

8405-01-232-5332

8405-01-232-5333

8405-01-232-5334

8405-01-232-5335

8405-01-232-5336

8405-01-232-5337

8405-01-232-5338

8405-01-232-5339

8405-01-232-5340

8405-01-232-5341

8405-01-232-5342

*Toothpaste*

8520-01-303-4037

8520-01-303-6438

#### Services

Janitorial/Custodial, Naval Air Station, Whidbey Island, Building 13, Oak Harbor, Washington

Janitorial/Custodial, for the following Casper, Wyoming locations:

Federal Building and U.S. Post Office, 100 E. B Street

Federal Building and U.S. Courthouse, 111 S. Walcott Street

#### Parts Sorting

Defense Reutilization and Marketing Office—San Antonio

Kelly Air Force Base, Texas

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91-4914 Filed 2-28-91; 8:45 am]

BILLING CODE 6820-33-M

#### DEPARTMENT OF DEFENSE

##### Department of the Air Force

##### USAF Scientific Advisory Board; Meeting

February 25, 1991.

The USAF Scientific Advisory Board Logistics Cross-Matrix Panel will meet on 20 March 1991, at 8 a.m. to 5 p.m. The purpose of the meeting is to receive briefings and discuss information

related to potential SAB study topics. The request for the closed meeting is based on the fact that contractor proprietary information will be discussed. In accordance with section 552b(c) of title 5, United States Code, specifically subparagraph (4), these meetings should be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-4933 Filed 2-28-91; 8:45 am]

BILLING CODE 3910-01-M

#### Department of the Army

##### Military Traffic Management Command; Military/Industry Mobile Homes Symposium; Open Meeting

Announcement is made of meeting of the Military/Industry Mobile Homes Symposium. This meeting will be held on 18 July 1991 at Headquarters, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, Virginia, and will convene at 0930 hours and adjourn at approximately 1600 hours.

**PROPOSED AGENDA:** The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Movement and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTPP-M, at telephone number (703) 756-1600, between 0800-1630 hours. Topics to be discussed should be received on or before 14 June 1991.

Roger F. Maguire,

Colonel, GS, Director of Personal Property.

[FR Doc. 91-4810 Filed 2-28-91; 8:45 am]

BILLING CODE 3710-08-M

##### Military Traffic Management Command; Military Personal Property Claims Symposium; Open Meeting

Announcement is made of meeting of the Military Personal Property Claims Symposium. This meeting will be held on 20 June 1991, at the Best Western Old Colony Inn, Alexandria, Virginia, and will convene at 0830 hours and adjourn at approximately 1630 hours.



**PROPOSED AGENDA:** The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Movement and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTPP-M, at telephone number (703) 756-1600, between 0800-1630 hours. Topics to be discussed should be received on or before 9 May 1991.

Roger F. Maguire,

Colonel, GS, Director of Personal Property.

[FR Doc. 91-4809 Filed 2-28-91; 8:45 am]

BILLING CODE 3710-08-M

### **Military Traffic Management Command; Military Personal Property Symposium; Open Meeting**

Announcement is made of meeting of the Military Personal Property Symposium. This meeting will be held on 29 May 1991 at the Best Western Old Colony Inn, 625 First Street, Alexandria, Virginia, and will convene at 0930 hours and adjourn at approximately 1600 hours.

**PROPOSED AGENDA:** The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Movement and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTPP-M, at telephone number (703) 756-1600, between 0800-1630 hours. Topics to be discussed should be received on or before 24 April 1991.

Roger F. Maguire

Colonel, GS, Director of Personal Property.

[FR Doc. 91-4811 Filed 2-28-91; 8:45 am]

BILLING CODE 3710-08-M

### **Corps of Engineers, Department of the Army**

#### **Inland Waterways Users Board; Meeting**

**AGENCY:** Department of the Army.

**SUBAGENCY:** Corps of Engineers.

**ACTION:** Notice of open meeting.

**SUMMARY:** In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

*Name of Committee:* Inland Waterways Users board.

*Date of Meeting:* March 26, 1991.

*Place:* San Luis Hotel, 5222 Seawall Boulevard, Galveston, Texas 77551, (Tel. (409) 744-1500.

*Time:* 8:30 a.m. to 4 p.m.

#### *Proposed Agenda*

AM Session

8:30 Registration.

Business Session

9 Administrative Announcements;

Chairman's Call to Order; Executive Director's Comments; Approval of Prior Meeting Minutes

Presentation of Information to the Board

9:20 Major Rehabilitation Program Changes

10:15 Break

10:30 Trust Fund Analysis

11:30 Lunch

PM Session

Southwestern Division Presentations

1 Montgomery Point L&D—Update & Status

1:30 Sargent Beach—Update & Status

2 Aransas & Other GIWW West Problems

2:30 Break

2:45 Public Comment Period

3:45 Instructions to Board Staff

4 Adjourn

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

#### **FOR FURTHER INFORMATION CONTACT:**

Mr. David B. Sanford, Jr., Headquarters, U.S. Army Corps of Engineers, CECW-P, Washington, DC 20314-1000 at (202) 272-0146.

Hugh F. Boyd III,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 91-4807 Filed 2-28-91; 8:45 am]

BILLING CODE 3710-92-M

### **DEPARTMENT OF ENERGY**

#### **Financial Assistance: Guided Wave, Inc.**

**AGENCY:** U.S. Department of Energy.

**ACTION:** Intent to negotiate a cooperative agreement entitled "Thin-Film Device for Process Measurement" with Guided Wave, Inc., El Dorado Hills, CA.

**SUMMARY:** The Department of Energy announces that pursuant to 10 CFR

600.7(b)(2) it plans to award a cooperative agreement noncompetitively to Guided Wave, Inc. for development of a miniature analytical device based on thin-film optical waveguide technology. This award will be for a period of two years at a total cost of approximately \$680,000. DOE's share of the cost will total approximately \$500,000. This action is authorized by Public Law 93-577, Federal Nonnuclear Energy Research and Development Act of 1974, Public Law 96-294, Energy Security Act, Public Law 93-438, Energy Reorganization Act of 1974, and Public Law 94-385, Energy Conservation and Production Act. The proposed activity will provide funds for the development of a new industrial process sensor. The proposed sensor would be a near-infrared spectrophotometer with a sensing probe constructed using thin-film waveguide technology. This device would be suitable for rapid in-situ composition determination of many industrial liquids. The award of this noncompetitive assistance is justified under subparagraph D of 10 CFR 600.7(b)(2)(i) as follows: (D) The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications.

**CONTACT:** U.S. Department of Energy, Idaho Operations Office, Attn: Scott D. Applonie, Contracts Management Division, 785 DOE Place, Idaho Falls, ID 83402-1129, (208) 526-8558.

**PROCUREMENT REQUEST NUMBER:** 07-91ID13063.000.

Dated: February 7, 1991.

Jeffrey Hoyles,

Acting Director, Contracts Management Division.

[FR Doc. 91-4934 Filed 2-28-91; 8:45 am]

BILLING CODE 6450-01-M

### **Federal Energy Regulatory Commission**

[Docket Nos. CP91-1298-000, et al.]

#### **Williams Natural Gas Company, et al.; Natural gas certificate filings**

February 22, 1991.

Take notice that the following filings have been made with the Commission:

#### **1. Williams Natural Gas Company**

[Docket No. CP91-1288-000]

Take notice that on February 19, 1990, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 7401, filed in Docket No. CP91-1288-000, a



request pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act, to abandon the sale of natural gas to the U.S.A. Department of the Army, Sunflower Army Ammunition Plant (Sunflower) in Johnson County, Kansas, pursuant to WNG's blanket authorization issued in Docket No. CP82-479-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states the customer, Sunflower has agreed to cancellation of its sales contract. The facilities will remain in place to allow Sunflower to access transportation gas, as noted by WNG.

*Comment date:* April 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

**Texas Eastern Transmission Corporation, Columbia Gas Transmission Corporation, Colorado Interstate Gas Company, Western Transmission Corporation, El Paso Natural Gas Company**

[Docket Nos. CP91-1258-000, CP91-1259-000, CP91-1260-000, CP91-1261-000, CP91-1262-000, CP91-1263-000]

Take notice that Applicants filed in the above-referenced dockets prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with

the Commission and open to public inspection.<sup>1</sup>

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

*Comment date:* April 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

<sup>1</sup> These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91-1258-000 (2-14-91)	Endevco Oil & Gas Company (marketer).	400,000 400,000 146,000,000	Various	Various	10-8-90, IT-1, Interruptible	ST91-6850, 1-10-91
CP91-1259-000 (2-14-91)	Sheldon Gas Company, Inc. (LDC).	500 400 182,500	KY	OH	12-24-90, ITS, Interruptible	ST91-6640, 1-9-91
CP91-1260-000 (2-14-91)	Southern Gas Company, Inc. (marketer).	10,000 8,000 3,650,000	KY	WV	12-28-90, ITS, Interruptible	ST91-6639, 1-1-91
CP91-1261-000 (2-14-91)	PSI, Inc. (marketer)	25,000 <sup>1</sup> 2,525 922,000	WY	TX	10-1-88, TI-1, Interruptible	ST91-6830, 1-1-91
CP91-1262-000 (2-15-91)	Sagebrush Services, Inc. (producer).	1,000 <sup>2</sup> 500 182,500	WY	WY	1-4-91, TI-1, Interruptible	ST91-6916, 1-13-91
CP91-1263-000 (2-15-91)	Southwestern Public Service Company (end-user).	103,000 14,111 5,150,515	Various	NM, TX	8-30-90, T-1, Interruptible	ST91-6645, 1-11-91

<sup>1</sup> Measured in Mcf.

<sup>2</sup> Measured in Mcf.

Applicant's address	Blanket docket
Colorado Interstate Gas Co., P.O. Box 1087, Colorado Springs, CO 80944.	CP86-589, et al.
Columbia Gas Transmission Corp., 1700 MacCorkle Avenue, SE., Charleston, WV 25314.	CP86-240-000.
El Paso Natural Gas Co., P.O. Box 1492, El Paso, TX 79978.	CP88-433-000.
Texas Eastern Transmission Corp., 5400 Westheimer Court, P.O. Box 1642, Houston, TX 77251-1642.	CP88-136-000.
Western Transmission Corp., 1801 California Street, suite 3500, Denver, CO 80202.	CP86-717-000.

**MIGC, Inc.**

[Docket No. CP91-1264-000]

Take notice that on February 15, 1991, MIGC, Inc. (MIGC), 12200 North Pecos Street, suite 230, Denver, Colorado 80234, filed in Docket No. CP91-1264-000 a prior notice request with the Commission pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a sales tap for the delivery of natural gas to the working interest owners of the Sand Dunes Unit, end-users, in Converse County, Wyoming, under the blanket certificate issued in Docket No. CP82-409-000 pursuant to section 7 of the NGA, all as more fully set forth in the

request which is open to public inspection.

MIGC states that it would deliver the MMBtu equivalent of up to 35 MMcf per day of natural gas for the first three to six months of operation and the MMBtu equivalent of up to 20 MMcf per day of natural gas thereafter. MIGC states that it anticipates no significant impact on its peak day or annual natural gas deliveries as a result of the proposed service. MIGC also states that it would charge the Sand Dunes Unit a rate pursuant to MIGC's interruptible FERC Rate Schedule ITS-1.

*Comment date:* April 8, 1991, in accordance with Standard Paragraph G at the end of this notice.



**Texas Eastern Transmission Corporation**  
[Docket No. CP89-2021-004]

Take notice that on February 14, 1991, Texas Eastern Transmission Corporation (Texas Eastern), Post Office Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-2021-004 pursuant to section 7(c) of the Natural Gas Act a petition to amend the certificate of public convenience and necessity issued by the Commission's Order dated March 30, 1990, in Docket No. CP89-2021-000 (50 FERC ¶61,435), so as to add their Rate Schedule I, sale for resale service, to the service already provided to UGI Corporation (UGI) in the above mentioned docket, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Texas Eastern States that pursuant to a Service Agreement dated August 11, 1989, it will offer interruptible sales service under Rate Schedule I as a service now available to UGI Texas Eastern states that service under this Rate Schedule was inadvertently omitted from the original application.

*Comment date:* April 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

**Mississippi River Transmission Corporation**

[Docket No. CP91-1054-000]

Take notice that on February 15, 1991, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP91-1054-000 an application pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service for Arkla Energy Marketing Company (Arkla) a shipper, under MRT's blanket certificate issued in Docket No. CP89-1121-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MRT proposes to transport up to 140,000 MMBtu of natural gas per day for Arkla from receipt points located in Arkansas, Illinois, Louisiana, Oklahoma and Texas to delivery points located in Illinois, Louisiana, Arkansas and Missouri. Arkla estimates that the average day and annual transportation quantities would be 140,000 and 51,100,000 MMBtu, respectively. MRT states that the transportation of natural gas for Arkla commenced September 15, 1990, pursuant to Section 284.223(a) of the Commission's Regulations, as reported in Docket No. ST91-6427-000.

*Comment date:* April 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-4835 Filed 2-28-91; 8:45 a.m.]

BILLING CODE 6717-01-M

[Docket Nos. TA91-1-2-002, TM91-2-2001 and TF91-5-2-002]

**East Tennessee Natural Gas Co.; Compliance Filing**

February 22, 1991.

Take notice that on January 28, 1991, to comply with the Commission's December 28, 1991 letter order in Docket Nos. TA91-1-2 and TM91-2-2, East Tennessee Natural Gas Company (East Tennessee) filed the following revised tariff sheets to First Revised Volume No. 1 of its FERC Gas tariff, to be effective January 1, 1991:

**TA91-1-2**

Third Substitute Second Revised Sheet No. 4  
Third Substitute Second Revised Sheet No. 5

**TF91-5-2**

Third Substitute First Revised Second Revised Sheet No. 4  
Second Substitute First Revised Second Revised Sheet No. 5

East Tennessee states that a copy of the tariff filing is being mailed to all affected customers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before March 1, 1991. Protests will

be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-4837 Filed 2-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA91-7-000]

**Doyle Mayo; Petition for Staff Adjustment Under NGPA Section 502(c)**

February 22, 1991.

Take notice that on February 13, 1991, Doyle Mayo filed with the Commission, a petition for adjustment, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) and part 385 (subpart K) of the Commission's regulations. The gas produced from the Miles # 1 well has been purchased by Colorado Interstate Gas Company (CIG) under a long-term gas purchase agreement dated June 19, 1978, and which expired December 31, 1988.

Mr. Mayo requests that the Commission grant for the Miles # 1 well located in Beaver County, Oklahoma, an adjustment from the requirements of § 271.805 of the Commission's regulations governing the continuing qualification of natural gas produced from stripper wells pursuant to section 108 of the NGPA. Mr. Mayo alleges that this relief is justified on grounds of special hardship and that an unfair distribution of burdens and inequity would result if the requested relief were not granted.

Any person desiring to be heard or protest this petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 15, 1991. All protests filed will be considered, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules. Copies of this



petition, are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 91-4836 Filed 2-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-68-002]

### **Penn-York Energy Corp.; Compliance Filing**

February 22, 1991.

Take notice that on February 15, 1991, Penn-York Energy Corporation (Penn-York), filed as part of its FERC Gas Tariff the following tariff sheets, to comply with the Commission's order issued January 31, 1991, in the above-referenced proceeding:

#### **Third Revised Volume No. 1**

Substitute First Revised Sheet No. 8

Substitute First Revised Sheet No. 17

Penn-York states that the revised tariff sheets and revised statements and schedules reflect the Commission's rejection of Penn-York's proposal to recover the costs associated with extraordinary past losses from its storage fields.

Penn-York states that copies of this filing have been mailed to Penn-York's purchasers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before March 4, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 91-4838 Filed 2-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-93-000]

### **Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff**

February 22, 1991.

Take notice that on February 19, 1991, Transcontinental Gas Pipe Line

Corporation (Transco) submitted for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Section 4 of the Natural Gas Act and part 154 of the Commission's Regulations, First Revised Sheet No. 1307 to its FERC Gas Tariff Original Volume No. 2, which incorporates the provisions of an amendment to Rate Schedule X-140. The proposed effective date of the tariff sheet is April 1, 1990.

Transco states that the purpose of this filing is to revise Rate Schedule X-140, contained in Volume 2 of Transco's FERC Gas Tariff to amend the provision addressing gas loss charges.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 4, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,  
Secretary.

[FR Doc. 91-4839 Filed 2-28-91; 8:45 am]

BILLING CODE 6717-01-M

### **Office of Fossil Energy**

[FE Docket No. 90-99-NG]

#### **ProGas Limited; Order Granting Blanket Authorization To Import and Export Natural Gas From and to China**

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice to an order granting blanket authorization to import and to export natural gas.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting ProGas Limited (ProGas) blanket authorization to import from, and to export to, Canada, up to 400 Bcf of natural gas over a two-year term beginning on the date of first delivery of the import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-

9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 22, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-4935 Filed 2-28-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-07-NG]

#### **Spot Market Corp.; Application for Blanket Authorization To Import Natural Gas From Canada**

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of application for blanket authorization to import natural gas from Canada.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on January 25, 1991, of an application by Spot Market Corporation (SM Corp.) for blanket authority to import up to 300 Bcf of natural gas from Canada over a two-year term from the date of first delivery. All transactions contemplated under the SM Corp. import proposal would utilize existing facilities and would be subject to FE's reporting requirements.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., April 1, 1991.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

#### **FOR FURTHER INFORMATION CONTACT:**

Xavier Puslowski, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4708  
Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.



**SUPPLEMENTARY INFORMATION:** SM Corp., a Texas corporation with its principal place of business in Houston, Texas, is engaged in the marketing of natural gas throughout the U.S. SM Corp. asserts that the blanket authorization requested to import competitively priced natural gas will enable it to make alternative supplies of gas available to a wide range of markets in the United States, including pipelines, local distribution companies, electric utilities, and industrial and agricultural end-users. SM Corp. claims that the proposed imports will be competitive in the markets served as the price, terms and conditions for each proposed sale will be negotiated at arms length between the parties involved.

The decision on this application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6664, February 22, 1984). Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import authority. The applicant asserts that this import arrangement will be competitive and therefore is in the public interest. Parties opposing this arrangement bear the burden of overcoming this assertion.

#### NEPA Compliance

The National Environmental Policy Act (NEPA) 42 U.S.C. 4321 *et seq.* requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

#### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written

comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests

additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of SM Corp.'s application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 22, 1991.

Clifford P. Tomaszewski,  
Acting Deputy Assistant Secretary For Fuels  
Programs, Office of Fossil Energy.  
[FR Doc. 91-4936 Filed 2-28-91; 8:45 am]  
BILLING CODE 6450-01-M

#### Office of Hearings and Appeals

##### Notice of Cases Filed During the Week of January 18 through January 25, 1991

During the Week of January 18 through January 25, 1991, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated February 25, 1991.

George B. Breznay,  
Director, Office of Hearings and Appeals.

#### LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 18 through January 25, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 22, 1991	Smith Tank Lines, Fresno, CA	LEE-0020	Exception to the reporting requirements. If granted: Smith Tank Lines would not be required to file Form EIA-782B, "Resellers'/Retailers Monthly Petroleum Sales Report."
Jan. 23, 1991	Texaco/Fagan's Texaco, Hardin, KY	RR321-48	Request for modification/rescission in the Texaco refund proceeding. If granted: The December 17, 1990 Decision and Order (Case No. RF321-3204 and RF321-6312) would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.



## LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of January 18 through January 25, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 23, 1991	Teesdale Oil, Bridger, MT	LEE-0021	Exception to the reporting requirements. If granted: Teesdale Oil would not be required to file Form EIA-782-B, "Resellers'/Retailers Monthly Petroleum Sales Report."
Jan. 23, 1991	Great Lakes Carbon Corporation Washington, DC	RR272-62	Request for modification/rescission in the crude oil refund proceeding. If granted: The November 27, 1990 Decision and Order (Case No. RF272-5971 and RF272-67247) issued to Great Lakes Carbon Corporation would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
Jan. 25, 1991	The Lowry Coalition, Denver, CO	LFA-0095	Appeal of an information request denial. If granted: The Lowry Coalition would receive documents not previously provided pertaining to disposal of waste at the Lowry Landfill Superfund Site by DOE, Rockwell and other DOE contractors.
Jan. 25, 1991	Associated Service Corporation, Washington, DC	RR272-66	Request for modification/rescission in the crude oil refund proceeding. If granted: The January 4, 1991 Decision and Order (Case No. RF272-41459) would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.

## REFUND APPLICATIONS RECEIVED

[Week of January 18 to January 25, 1991]

Date received	Name of refund proceeding/name of refund applicant	Case number
06/02/89	C & T Arco	RF304-12191
01/17/91	Don McCoy	RF309-1420
01/18/91	Horner's Exxon Service	RF307-10171
01/18/91	Dearman Transportation Co., Inc.	RF272-86034
01/22/91	Hillman Oil Co.	RF331-1
01/22/91	The Anschutz Corp.	RF326-216
01/22/91	Harbor Fuel Company, Inc.	RF326-217
01/22/91	Vantage Petroleum Corp.	RF326-218
01/22/91	Hvor Service Station	RF321-13097
01/22/91	Yellow Cab Co.	RF300-15207
01/23/91	G. Crawford Delivery & Storage	RF272-34
01/23/91	Edson, Inc.	RF315-10120
01/23/91	Jerald Wright's Gulf	RF300-15342
01/23/91	Marben Oil Co.	RF321-12978
01/25/91	East Central ISD	RF326-219
01/25/91	Rapid 1-90 Truck Stop	RF326-220
01/25/91	Bill's Gulf Centre	RF300-15345
01/25/91	Gilbert's Garage	RF300-15361
01/25/91	Southside Food Store	RF300-15362
01/25/91	Wilmot Gulf	RF300-15363
01/25/91	Cook's Gulf	RF300-15364
01/25/91	Cook's Gulf #2	RF300-15365
01/28/91	American Colloid Company	RF326-221
01/28/91	Smokey's Service Station	RF326-222
01/28/91	Anchorage Borough School District	RF326-223
01/28/91	St. Regis/Champion Internat'l	RF307-10172
01/28/91	North Kitsap School District	RF272-86284
01/28/91	Piatt County, Illinois	RF272-86285
01/28/91	Winter Haven, FL	RF272-86286
01/18/91 thru 01/25/91	Crude Oil Refund, Application received	RF272-86101 thru RF272-86292
01/18/91 thru 01/25/91	Gulf Oil Refund, application received	RF300-15192 thru RF300-15381
01/18/91 thru 01/25/91	Texaco Oil Refund, application received	RF321-12869 thru RF321-13015

[FR Doc. 91-4937 Filed 2-28-91; 8:45 am]

BILLING CODE 6450-01-M

### Notice of Issuance of Decisions and Orders During the Week of January 21 through January 25, 1991

During the week of January 21 through January 25, 1991, the decisions and orders summarized below were issued with respect to applications for refund or other relief filed with the Office of Hearings and Appeals of the

Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

#### Refund Applications

*Delta Petroleum Products, Inc., Pam Oil, Inc.*, 1/22/91, RF272-36130, RF272-36229

The DOE issued a Decision and Order denying Applications for Refund filed by two resellers of refined petroleum products in the Subpart V crude oil

proceeding. During the crude oil control period, each applicant purchased diesel fuel for use in its delivery trucks. Since none of this diesel fuel was resold, each applicant claimed that it was an end-user and entitled to utilize the end-user presumption of injury. The DOE rejected this claim finding that as resellers of refined petroleum products both applicants were allowed to pass through their increased diesel fuel costs to their customers. Accordingly, both applicants' applications were denied.



*Earl C. Smith, Inc.*, 1/24/91, RF272-70618, RD272-70618

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to Earl C. Smith (Smith) based upon its purchases of refined petroleum products between August 19, 1973 and January 27, 1981. The applicant used the petroleum products for its transportation operations. The applicant was an end-user of the refined petroleum products and was therefore presumed injured. A consortium of 32 States and two territories (the States) filed a Statement of Objections and a Motion for Discovery with respect to Smith's Application. The DOE found that the States' filing was insufficient to rebut the presumption of injury. Therefore, Smith's Application for Refund was granted and the State's Motion for Discovery was denied. The refund granted to Smith was \$5,614.

*Exxon Corporation/Consumers Power Co.*, 1/25/91, RF307-10074

The DOE issued a Decision and Order denying an Application for Refund filed in the Exxon Corporation refund proceeding on behalf of Consumers Power Company. Consumers, a public utility, requested a refund based on its purchases of imported crude oil from Imperial Oil Ltd., a Canadian subsidiary of Exxon. However, the firm alleged that the product it purchased should be considered residual fuel oil and requested a refund from the Exxon refined product pool. The DOE determined that the product purchased was crude oil and that Consumers' claim should be evaluated under the standards set forth in *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988), which implemented refund procedures for crude oil funds. The DOE found that Consumers was not eligible for a Subpart V crude oil refund since it had previously released its rights to all other crude oil refunds by participating in the Stripper Well Refiners Escrow. Accordingly, Consumers application was denied.

*Exxon Corporation/Marlen L. Knutson Distributing, Inc., Fletcher-Hendley Oil Co., Inc.*, 1/23/91, RF307-8838, RF307-8904

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Exxon Corporation special refund proceeding. Each applicant is a reseller of Exxon products, and has elected to limit its claim to the greater of \$5,000 or 40 percent of its allocable share. For Knutson, 40 percent is greater, and its total refund is \$17,229 (\$12,567 principal plus \$4,662 interest) and for Fletcher, \$5,000 is greater, and its total

refund is \$6,855 (\$5,000 principal plus \$1,855 interest).

*Fibreboard Corporation*, 1/23/91, RF272-63202, RD272-63202

The Department of Energy (DOE) issued a Decision and Order denying Fibreboard Corporation's (Fibreboard) Application to receive a Refund in the Subpart V crude oil refund proceeding. Fibreboard applied for a refund based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. However, an affiliate of Fibreboard had previously executed a valid Waiver and Release in its receipt of a refund from the Surface Transporters' Escrow account, one of the eight Stripper Well escrows. Therefore, because the Waiver and Release filed by its affiliate bars Fibreboard from receiving a Subpart V crude oil refund, the DOE denied Fibreboard's Application for Refund. In light of this finding, the DOE dismissed a Motion for Discovery filed by a consortium of States in regard to Fibreboard's Application.

*Luhr Bros., Inc.*, 1/25/91, RF272-63109, RD272-63109

The Department of Energy (DOE) issued a Decision and Order denying Luhr Bros., Inc.'s (Luhr) Application to receive a Refund in the Subpart V crude oil refund proceeding. Luhr applied for a refund based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. However, Luhr acknowledged having previously executed a valid Waiver and Release in its receipt of a refund from the Rail and Water Transporters' Escrow account, one of the eight Stripper Well escrows. Luhr applied for a Subpart V crude oil refund based on the refined petroleum products for which it did not receive a refund in the Stripper Well proceeding. However, the DOE decided that a company executing a valid Waiver and Release and receiving a refund from the Rail and Water Transporters' escrow is ineligible to receive a refund in the Subpart V crude oil refund proceeding for any of its purchases of refined petroleum products between 1973 and 1981. Therefore, the DOE denied Luhr's Application for Refund. In light of this finding, the DOE dismissed a Motion for Discovery filed by a consortium of States in regard to Luhr's Application.

*Marathon Petroleum Company/Township Oil Company*, 1/25/91, RR250-8

The DOE issued a Decision and Order reviewing a Motion for Reconsideration filed by Township Oil Company in the Marathon Petroleum Company special

refund proceeding. In approving the Motion, the DOE found that Township had provided information to allow it to approve a refund at greater than the volumetric rate. Specifically, the DOE measured the per gallon overcharge to Township as the differences between (i) the May 15 price to Township's class of purchaser (the jobber class) plus estimated deemed recovery amounts passed through to the Dealer Tankwagon class and (ii) the price that Township actually paid. Township's principal refund was \$195,359. The firm showed that it had incurred injury at that level. Township also received interest of \$79,126.

*Shell Oil Company/Dunahoo Shell, White House Service Station, Childs Service Station, Ladson Shell*, 1/22/91, RF315-2114, RF315-2177, RF315-2118, RF315-2120

The DOE issued a Decision and Order denying the Shell refund application of four retailers who claimed to have purchased Shell petroleum products indirectly. None of the four applicants was able to establish a reasonable gallonage figure or verify that the product it purchased originated with Shell. Accordingly, the four applications were denied.

*State of New York*, 1/23/91, RF272-62522

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to the State of New York (New York) based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The State applied for a refund based solely on its purchases of refined petroleum products for its end-use and included in its claim the purchases of all State agencies in New York. Phillip P. Kalodner, counsel for utilities, transporters and manufacturers filed objections to this application in which he argues that governmental entities are ineligible to receive Subpart V crude oil refunds and that non-governmental claimants should have priority in receiving refunds. Moreover, Mr. Kalodner attempted to rebut New York's reliance on the end-user presumption. The DOE found Mr. Kalodner's objections to New York's eligibility unconvincing and granted the State a refund of \$946,836.

*Stolaruk Corporation*, 1/25/91, RF272-49625, RD272-49625

Stolaruk Corporation is involved in the manufacturing and selling of specialty asphalts. It filed an Application for Refund as an end-user of



refined petroleum products in the Subpart V crude oil refund proceeding. A group of State governments and two territories of the United States (the States) objected to the application filed by Stolaruk Corporation, provided evidence concerning the construction industry as a whole, and filed a Motion for Discovery. The DOE determined that the States had failed to produce any convincing evidence to show that Stolaruk Corporation had been able to pass on the crude oil overcharges to its customers. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Stolaruk Corporation were injured by crude oil overcharges. Stolaruk Corporation was unable to pass through its alleged overcharges through the use of price escalator clauses. The DOE therefore denied the Motion for Discovery filed by the States, and granted Stolaruk Corporation a refund of \$30,575 based on its approved purchases of 38,218,216 gallons of petroleum products.

*Superba Print Works, 1/25/91, RF272-77262*

The Department of Energy issued a Decision and Order granting a refund from the crude oil overcharge funds to Superba Print Works (Superba) based upon its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Petroleum Funds, Inc., the filing service which submitted Superba's application, estimated Superba's middle distillate and naphtha purchases based on yearly purchases during the period 1973 through 1976. Superba's maintenance manager (who was with the company during the refund period) substantiated that Superba purchases middle distillates throughout the refund period, but only purchased naphthas through 1978. Accordingly, the DOE determined that Superba was eligible to receive a refund based on Petroleum Funds' estimation of its middle distillate purchases from 1973-1981 and naphtha purchases from 1973-1978. The refund granted to Superba Print Works in this Decision is \$1,088.

*Texaco Inc./Miller Oil Co., Miller Oil Co., Inc., 1/23/91, RF321-2344, RF321-4549*

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Texaco Inc. special refund proceeding. The Applications for Refund were filed on behalf of Miller Oil Co., Inc. by unrelated parties who both requested a refund based on that firm's purchases of Texaco products during the

consent order period. Mr. Benny Magness contended that he is entitled to a refund for the firm's purchases of Texaco product since Miller Oil Co., Inc.'s marketing contract with Texaco was transferred to him in a 1987 sale. However, Miller Oil Co., Inc. still exists as a corporation and retained all of its capital stock in the sale of assets to Mr. Magness. Since the actual Texaco refund was not specifically transferred to Mr. Magness as an asset, the DOE determined that Mr. Magness was not entitled to the Texaco refund and denied his Application for Refund (Case No. RF321-2344). The DOE determined that Miller Oil Co., Inc. was the proper recipient of the refund in this proceeding. Accordingly, Miller Oil Co., Inc. (Case No. RF321-4549) was granted a refund of \$14,932 (\$12,307 principal plus \$2,625 interest).

*Vrontados Naftiki Etairia P.E., Home Lines, Inc., Seagroup, Inc., The Shipping Corporation of India, 1/25/91, RF272-25262, RD272-25262, RF272-27325, RD272-27325, RF272-44156, RD272-44156, RF272-45925, RD272-45925*

The DOE granted four Applications for Refund filed by foreign flagship carriers operating ocean-going vessels in the foreign commerce of the United States in the Subpart V crude oil refund proceeding. Rejecting arguments raised by a group of State governments, the DOE concluded that (i) the applicants were eligible to receive crude oil refunds even though they were under foreign ownership and (ii) foreign ocean carriers were not automatically able to pass through increased bunker fuel costs to their customers. The DOE concurred with the States' position that the DOE price regulations did not apply to sales in the Panama Canal Zone (PCZ), and subtracted those gallons of purchases which the applicants certified had been made in the PCZ. As end-user of the petroleum products involved, the applicants were presumed injured by the crude oil overcharges. The total of the refunds granted in this Decision is \$366,526. The DOE also denied the four Motions of Discovery filed by the States for reasons discussed in previous Decisions.

#### Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Alice Independent School District	RC272-110	01/25/91
Atlantic Richfield Co./Boston's, Inc.	RF304-2368	01/22/91
Atlantic Richfield Co./Louis P. Naoum et al.	RF304-2175	01/22/91
Atlantic Richfield Co./Wo Wo Wash et al.	RF304-9692	01/22/91
Exxon Corporation/MacArthur Petroleum & Solvent Co., Inc.	RF307-5976	01/24/91
Bedford Farm Bureau Cooperative	RF307-5984	
Exxon Corporation/Seaside Petroleum Co., Inc. et al.	RF307-6146	01/23/91
Florida Keys Electric Cooperative Association, Inc.	RF272-47804	01/25/91
Gulf Oil Corp./Jackson Hilltop U-Haul	RF300-11304	01/25/91
Gulf Oil Corp./Roy's Gulf Service et al.	RF300-6639	01/25/91
Hackney Farmers Union Cooperative Association	RF272-47871	01/22/91
Houston Coca-Cola Bottling Co.	RC272-112	01/25/91
Jefferson Davis County Schools	RC272-109	01/25/91
Kenneth Brosius	RC272-111	01/25/91
Lewis Cooperative Company et al.	RF272-70056	01/23/91
Massman Construction Co. et al.	RF272-26264	01/25/91
Murphy Oil Corp./Eastern Oil Company of SC, Inc. et al.	RF309-1085	01/22/91
Oregon Health Sciences University et al.	RF272-60752	01/23/91
Placid Oil Co./Kirk's Services, Inc.	RF314-38	01/24/91
Shell Oil Company/Boise Cascade Corp. et al.	RF315-1394	01/23/91
Shell Oil Company/Carmel Littlejohn Shell et al.	RF315-91	01/23/91
Shell Oil Company/Kerr-McGee Corporation	RF315-8241	01/25/91
Shell Oil Company/William E. Tribou Oil Company et al.	RF315-6255	01/24/91
Texaco Inc./Cheshire Oil Company, Inc.	RF321-3759	01/23/91
Cheshire Oil Co., Inc.	RF321-7108	
Scenic State Oil Company	RF321-11476	
Texaco Inc./Gordon's Texaco Service et al.	RF321-303	01/22/91
Texaco Inc./I.B. Lemoine et al.	RF321-4635	01/23/91
Texaco Inc./Keenan's Oil Service, Inc.	RF321-2837	01/23/91
Texaco Inc./Poor Boys Texaco et al.	RF321-3637	01/24/91
Texaco Inc./Ward Oil Co.	RF321-42	01/22/91
Mauritz & Carroll	RF321-2289	
Butler Petroleum Corporation	RF321-2347	



Name	Case No.	Date
Maine Potato Growers, Inc.	RF321-2363	
Walter Delanoit	RC272-113	01/25/91

**Dismissals**

The following submissions were dismissed:

Name	Case No.
Al's Texaco	RF321-11820
Bob's Texaco	RF321-4483
Briarwood Gulf	RF300-11669
City of Buffalo	RF321-12211
Cliff's Texaco	RF321-11969
Cottage Hill Texaco & Auto	RF321-7190
Dick Hodge Texaco	RF321-8483
George's Texaco	RF321-9635
Glados Road Gulf	RF300-11511
Kar-Park Service Co.	RF321-4142
Lakewood Texaco	RF321-11859
Lewis Dukes Gulf	RF300-11645
Miyakawa Service Inc.	RF321-8221
Myrtleowne Texaco	RF321-397
Parkers Texaco Service	RF321-12302
Paul Yates Co.	RF272-71699
Pawlak's Texaco Service	RF321-1176
Perrino's Gulf Service	RF300-9183
Plaza Texaco Service	RF321-1201
Rogers Texaco	RF321-1367
Ron's Texaco Inc.	RF321-5657
Sam's Gulf	RF300-9153
Stuart's Interstate	RF321-10766
Virgil's Texaco	RF321-1459
W.E. Beck Oil Co.	RF321-3531
Westchester County	RF272-2983
Whitaker's Texaco	RF321-1270

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: February 25, 1991.

George B. Breznay,  
Director, Office of Hearings and Appeals.  
[FR Doc. 91-4938 Filed 2-28-91; 8:45 am]  
BILLING CODE 6450-01-M

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-3910]

**Agency Information Collection Activities Under OMB Review**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C.

3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA (202) 382-2740.

**SUPPLEMENTARY INFORMATION:****Office of Pesticides and Toxic Substances**

Title: Polychlorinated Biphenyls (PCBs): Use in Electric Equipment and Transformers. [EPA ICR No. 1000.04; OMB #2070-0003]. This is a revision of a currently approved collection.

Abstract: In compliance with TSCA section 6(e), owners of PCB transformers must keep records on unit use, inspection and corrective action for leaks. These records must be maintained for at least 3 years after disposing of the transformer. Owners of PCB transformers must also report any fire-related incidents immediately to the National Response Center. EPA conducts periodic inspections of facilities operating PCB transformers. The inspections are used to generate reports, and to ensure compliance.

Burden Statement: The public burden for this collection of information is estimated to average 1 hour per response for reporting, less than 0.2 hour per recordkeeper annually. This estimate includes the time needed to review instructions, search data sources, gather the data needed, and review the collection of information.

Respondents: Owners of PCB transformers.

Estimated No. of Respondents: 11 respondents for reporting, and 95,000 recordkeepers.

Estimated No. of Responses per respondent: 1.

Estimated Total Annual Burden on Respondents: 15,781.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch, 401 M Street, SW., Washington, DC 20460.

and  
Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: February 19, 1991.

Paul Lapsley,  
Director, Regulatory Management Division.  
[FR Doc. 91-4887 Filed 2-28-91; 8:45 am]  
BILLING CODE 6560-50-M

[ER-FRL-3910-5]

**Environmental Impact Statements and Regulations; Availability of EPA Comments**

Availability of EPA comments prepared February 11, 1991 through February 15, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 13, 1990 (55 FR 13969).

**Draft EISs**

ERP No. D-AFS-J65165-MT Rating LO1, Flathead National Forest Land and Resource Management Plan, Amendment No. 10 Open Road Density Standard for Non-Wilderness Portion of the Forest, Implementation, Flathead, Lake, Lincoln and Missoula Counties, MT.

**Summary**

EPA has reviewed the draft EIS for the Open Road Density Standards and has no comments. The Forest Service's preferred Alternative 6 will improve protection of wildlife habitat and water quality.

ERP No. D-AFS-J65165-MT Rating EC2, Harvey-Eightymile Project Area, Timber Sale and Road Construction, Implementation, Deerlodge National Forest, Silver King Roadless Area, Philipsburg Ranger District, Granite County, MT.

**Summary**

EPA believes that Alternative B provides the greatest degree of environmental protection for area resources. The preferred Forest Service alternative, Alternative D, has high potential for impacts on fisheries and water quality. All stage monitoring of water quality, habitat quality and biological conditions should be incorporated into a preferred alternative management plan.

ERP No. D-AFS-L65142-AK Rating EC2, Shelter Cove and George Inlet Areas Timber Sale, Implementation,



**Tongass National Forest, Ketchikan Ranger District, AK.**

**Summary**

EPA has environmental concerns about the effect of the action alternatives on water quality and fisheries. Additional information is needed on standards and guidelines, monitoring, mitigation, log transfers facilities, and air quality.

ERP No. D-FHW-J40121-UT Rating EO2, US-89/Logan Canyon Highway, Improvements, Right Fork 9 miles East of Logan to Garden City, Funding 404 Permit and Special Use Permit, Wasatch-Cache National Forest, Cache and Rich Counties, UT.

**Summary**

EPA does not object to the overall proposed action of necessary route rehabilitation, but recommends that a supplement to the draft EIS be prepared because of the absence of a preferred alternative and insufficient information to fully assess the environmental impacts.

ERP No. DA-COE-L34006-OR Rating EO2, Elk Creek Lake Project, Construction and Operation, Rogue River, Implementation, Jackson County, OR.

**Summary**

EPA feels additional information is needed to identify existing need for the dam and the incremental contribution of this dam to meeting the need associated with the primary authorized purposes. Additional analyses are warranted on fishery effects. A detailed feasible mitigation plan needs to be developed for loss of elk and deer habitat.

**Final EISs**

ERP No. F-AFS-L61182-ID Valbois Destination Resort Village, Special Use Permit and Land/Resource Management Plan Amendments, Cascade Lake, Boise National Forest, Valley County, ID.

**Summary**

EPA has environmental objections with the proposed action based on several issues. Implementation of mitigation measures needed to insure no net increase in phosphorous input to Cascade Reservoir is uncertain. Water quality and public health concerns resulting from septic systems around the reservoir have been understated. Air quality effects, including the exceedence of air quality standards due to

woodstoves, have not been disclosed. The extent of wetland effects and needed mitigation have not been determined.

ERP No. F-CGD-E40723-FL Miracle Parkway Everest Parkway Improvement and Midpoint Bridge Construction, Over the Caloosahatchee River, US Coast Guard Approval and Permit, Cape Coral to Fort Myers, Lee County, FL.

**Summary**

EPA concludes that with the mitigation proposed to reduce noise, water quality and wetland impacts, environmental impacts from the roadway/bridge project would be minimal.

Dated: February 28, 1991.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 91-4943 Filed 2-28-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3910-4]

**Environmental Impact Statements: Availability**

Responsible Agency: Office of Federal Activities, General Information, (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed February 18, 1991 Through February 22, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910052, Draft EIS, FRC, WA, Elwha (FERC No. 2683) and Glines Canyon (FERC No. 588) Hydroelectric Projects, Operation and Maintenance, License, Elwha River, Clallam County, WA, Due: April 29, 1991, Contact: S. Ronald McKittrick (202) 219-2783.

EIS No. 910053, Draft EIS, AFS, MT, Moose Creek Timber Sales and Road Construction/Reconstruction, Implementation, Lewis and Clark National Forest, Kings Hill Ranger District, Meagher County, MT, Due: April 22, 1991, Contact: Craig Cowie (406) 547-3361.

EIS No. 910054, Draft EIS, NOA, SC, Ashepoo-Combahee-Edisto (ACE) Basin National Estuarine Research Reserve Management Plan, Site Designation, Beaufort, Colleton, and Charleston Counties, SC, Due: April 15, 1991, Contact: Susan Durden (202) 673-5122.

EIS No. 910055, Final EIS, BLM, AZ, Arizona Strip District, Land and Resource Management Plan, Implementation, Mohave and Coconino,

Counties, AZ, Due: April 01, 1991, Contact: Dennis Curtis (801) 673-3545.

EIS No. 910056, Final EIS, BIA, CA, AZ, NV, Spirit Mountain Planned Community Development, Lease Approval, Section 404 Permit, Fort Mojave Indian Reservation, Clark County, NV and San Bernardino County, CA, Due: April 01, 1991, Contact: Wilson Barber (602) 379-6600.

EIS No. 910057, Final EIS, FHW, MI, I-94BL/Michigan Avenue Improvement, Dickman Road to Columbia Avenue, Funding, Calhoun County, MI, Due: April 01, 1991, Contact: James Kirschensteiner (517) 377-1851.

EIS No. 910058, Final EIS, USN, AK, Second Relocatable-Over-The-Horizon-Radar (ROTHR) System/Surveillance Installations in the Northwest Pacific Base Camp Facilities, Improvement and Construction, Section 404 and 10 Permits, NPDES Permit, Amchitka Island, AK, Due: April 01, 1991, Contact: Joseph DiVittorio (206) 476-1091.

EIS No. 910059, Final EIS, MMS, AK, Navarin Basin Outer Continental Shelf (OCS) Oil and Gas Sale No. 107, Leasing, Bering Sea, AK, Due: April 01, 1991, Contact: Richard Miller (907) 261-4655.

Dated: February 26, 1991.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 91-4942 Filed 2-28-91; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50717; FRL-3880-9]

**Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Nonindigenous Microbial Pesticide**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's receipt of three notifications of intent to conduct small-scale field testing of nonindigenous strains of *Bacillus thuringiensis* from the E.I. duPont de Nemours and Company, Inc.

**DATES:** Written comments must be received on or before March 15, 1991.

**ADDRESSES:** Comments in triplicate, should bear the docket control number OPP-50717 and be submitted to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 246, CM



#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment(s) concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Rm. 246 at the Virginia address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Phil Hutton, Product Manager (PM) 17, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2690).

**SUPPLEMENTARY INFORMATION:** Three notifications of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy: Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), have been received from the E.I. duPont de Nemours and Company, Inc. of Wilmington, Delaware. The purpose of the proposed testing is to extend efficacy evaluations of the nonindigenous *Bacillus thuringiensis* strains toward lepidopterous and coleopterous insect pests of vegetables. All three strains have been exempted previously by the Agency from requirement of an Experimental Use Permit. The field tests are to take place in California, Delaware, Florida, Illinois, Mississippi, and Texas for a maximum combined acreage of 6 acres. All treated crops will be destroyed. Following the review of the application and any comments received in response to this Notice, EPA will decide whether or not an experimental use permit is required.

Dated: February 22, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-4916 Filed 2-28-91; 8:45 am]

BILLING CODE 6560-50-F

## FEDERAL MARITIME COMMISSION

[Docket No. 91-13]

**John Barbeau and Clelia Barbeau v. M. Anderson, Ocean Beach Transfer & Storage, Inc., HC&D Forwarders International, Inc., Gene Texeira, Crown Pacific; Ray Dasilva, and Does 1-30; Filing of Complaint and Assignment**

Notice is given that a complaint filed by John Barbeau and Clelia Barbeau ("Complainants") against M. Anderson, Ocean Beach Transfer & Storage, Inc., HC&D Forwarders International, Inc., Gene Texeira, Crown Pacific, Ray Dasilva, and Does 1-30 ("Respondents") was served February 25, 1991. Complainant alleges that Respondents engaged in violations of sections 10(b) and 19(d) of the Shipping Act of 1984, 46 U.S.C. app. §§ 1709(b) and 1718(d), section 16 and 17 of the Shipping Act, 1916, 46 U.S.C. app. §§ 815 and 816, and 46 CFR 510.21(f) and 510.22(b) and (c), by engaging in unjust and unreasonable practices regarding the transportation, against Complainant's wishes, of Complainant's household goods from San Diego, California to Honolulu, Hawaii.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by February 25, 1992, and the final decision of the Commission shall be issued by June 24, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 91-4833 Filed 2-28-91; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 91-12]

**Cape Fear Bonded Warehouse, Inc. v. Polish Ocean Lines and Sea-Gal Express Inc.; Filing of Complaint and Assignment**

Notice is given that a complaint filed by Cape Fear Bonded Warehouse, Inc.

("Complainant") against Polish Ocean Lines ("POL") and Sea-Gal Express Inc. ("Sea-Gal") (hereinafter collectively referred to as "Respondents") was served February 25, 1991. Complainant alleges that Respondents have violated sections 5(a) and 10(d), (b)(6), (b)(11), (b)(12), and (a)(2) of the Shipping Act of 1984, 46 U.S.C. app. §§ 1704(a) and 1709(d)(1), (b)(6), (b)(11), (b)(12), and (a)(2), by failing to file an agreement between themselves, Sea-Gal's failure to file a tariff, and POL's inclusion of terminal charges in its carrier tariff, thereby forcing all shippers to pay for trucking between Wilmington and Lumberton, North Carolina, whether or not the trucking services are used.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by February 25, 1992, and the final decision of the Commission shall be issued by June 24, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 91-4834 Filed 2-28-91; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

**Meridian Mutual Holding Company, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the



application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 22, 1991.

**A. Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Meridian Mutual Holding Company*, East Boston, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of East Boston Savings Bank, East Boston, Massachusetts.

**B. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Chesapeake Bancorp.*, Chestertown, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of The Chesapeake Bank & Trust Company, Chestertown, Maryland.

**C. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Caldwell County Bancshares, Inc.*, Hamilton, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Caldwell County Bank, Hamilton, Missouri.

**D. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Northpark Financial Corporation of Delaware*, Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Northpark National Bank, Dallas, Texas.

**E. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company and International Regulation) 101 Market Street, San Francisco, California 94105:

1. *Denali Bancorporation, Inc.*, Fairbanks, Alaska; to become a bank holding company by acquiring 100 percent of the voting shares of Denali State Bank, Fairbanks, Alaska.

Board of Governors of the Federal Reserve System, February 25, 1991.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 91-4847 Filed 2-28-91; 8:45 am]

BILLING CODE 6210-01-F

**Norwest Corp., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company**

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 29, 1991.

**A. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of United Banks of Colorado, Inc., Denver, Colorado. In connection with this application, United Banks of Colorado, Inc., Denver, Colorado, has applied to become a bank holding company by acquiring 100 percent of the voting shares of United Bank of Boulder, N.A., Boulder, Colorado; United Bank of Colorado Springs, N.A., Colorado Springs, Colorado; United Bank of Denver, N.A., Denver, Colorado; United Bank of Fort Collins, N.A., Fort Collins, Colorado; United Bank of Greeley, N.A., Greeley, Colorado; United Bank of Montrose, N.A., Montrose, Colorado; United Bank of Steamboat Springs, N.A., Steamboat Springs, Colorado; United Bank of Sterling, N.A., Sterling, Colorado; United Bank of Grand Junction - Downtown, N.A., Grand Junction, Colorado; United Bank of Brighton, N.A., Brighton, Colorado; United Bank of Aurora, N.A., Aurora, Colorado; United Bank of Ignacio, N.A., Ignacio, Colorado; United Bank of Pueblo, N.A., Pueblo, Colorado; United Bank of Littleton, N.A., Littleton, Colorado; United Bank of Broomfield, N.A., Broomfield, Colorado; United Bank of Sunset Park, N.A., Pueblo, Colorado; United Bank of Lakewood, N.A., Lakewood, Colorado; United Bank of Northglenn, N.A., Northglenn, Colorado; United Bank of Lasalle, N.A., Lasalle, Colorado; United Bank of Grand Junction, N.A., Grand Junction, Colorado; United Bank of Delta, N.A., Delta, Colorado; United Bank of Bear Valley, N.A., Denver, Colorado; United Bank of Colorado Springs - East, N.A., Colorado Springs, Colorado; United Bank of Southglenn, N.A., Arapahoe County, Colorado; United Bank of Longmont, N.A., Longmont, Colorado; United Bank of Durango, N.A., Durango, Colorado; United Bank of Skyline, N.A., Denver, Colorado; United Bank of Buckingham Square, N.A., Aurora, Colorado; United Bank of Monaco, N.A., Denver, Colorado; United Bank of Garden of the Gods, N.A., Colorado Springs, Colorado; United Bank of Arvada, N.A., Arvada, Colorado; United Bank of Fort Collins - South, N.A., Fort Collins, Colorado; United Bank of Arapahoe, N.A., Englewood, Colorado; United Bank of Southwest Plaza, N.A., Jefferson County, Colorado; United Bank of Cherry Creek, N.A., Denver, Colorado; United Bank of Highlands Ranch, N.A., Highlands Ranch, Colorado; United Bank of Academy



Place, N.A., Colorado Springs, Colorado; United Bank of Aurora - City Center, N.A., Aurora, Colorado; United Bank of Aurora - South, N.A., Aurora, Colorado; United Bank of Westminster, N.A., Westminster, Colorado.

Board of Governors of the Federal Reserve System, February 25, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-4848 Filed 2-28-91; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Alcohol, Drug Abuse, and Mental Health Administration

#### Demonstration Grants for the Prevention of Alcohol and Other Drug Abuse Among High-Risk Youth

**OFFICE:** Office for Substance Abuse Prevention, HHS.

**ACTION:** Program announcement.

#### Introduction and Background

This Program Announcement reflects a considerable shift in approach from previous OSAP announcements concerned with high risk youth in that it requires far more rigor in the conceptualization and design of projects and in the evaluation plans. In addition, proposals considered under this Program Announcement must be client- and not systems-oriented and must be focused on strategies directed solely at prevention of and early intervention for alcohol and other drug abuse. Grant proposals directed at demonstrating effective treatment and/or rehabilitation programs for alcohol and other drug use are outside the scope of this announcement.

The use of alcohol and other drugs by children and youth is a serious national problem. Alcohol and other drug use by the youth of our nation is often accompanied by academic failure; a high rate of school dropout; early sexual activity with increased probabilities of teenage pregnancy or AIDS; mental/emotional disorders; high adolescent mortality rates from drunken driving, violence, and crime; and a poor prognosis for a productive adult life (Penkower L. et al., 1991; Dryfoos, J., 1990). Although the direction of causality among these deleterious conditions may not be fully understood, the search for interventions that will prevent the youth of this nation from engaging in such self-destructive behavior has been accorded top priority.

In response to this national problem, the Congress passed legislation in 1986 (the Anti-Drug Abuse Act of 1986 (Pub. L. 99-570) and the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690)). These congressional actions established the Office for Substance Abuse Prevention (OSAP) within the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), and among other things, authorized the Director of OSAP to support a demonstration grant program for innovative and effective models for the prevention of alcohol and other drug abuse among high-risk youth.

This Program Announcement seeks grant proposals that:

(1) Test the feasibility of implementing previously untested innovative prevention strategies that hold great promise for expanding our repertoire of strategies and interventions in the prevention of alcohol and other drug abuse among high-risk youth populations; or

(2) Assess the program effectiveness, replicability, and generalizability of knowledge-based, established strategies for the prevention of alcohol and other drug use among high risk youth populations, including those derived from previous OSAP experience but not systematically evaluated.

In either case, evaluation of sufficient rigor to produce implementation and outcome findings worthy of dissemination is a requirement for these proposals. The emphasis on evaluation for this demonstration grant program emerges not only from the statutory guidelines in the legislation (Pub. L. 100-690) but also from the knowledge and experience OSAP has gained from the demonstration grant projects funded under two earlier Requests for Applications (RFAs). The purpose of rigorous evaluation is to aid those engaged in substance abuse prevention to discard ineffective strategies and pursue the development of those that are promising with respect to both implementation and outcome. A rigorous evaluation also serves to identify specific approaches and questions that might be suitable for testing in research projects funded by other ADAMHA components. Applications considered to lack a sufficiently detailed evaluation plan or to have an inadequate evaluation design will be judged non-competitive. This announcement reflects OSAP's commitment to the improvement of our knowledge and understanding of how to prevent the use and abuse of alcohol and other drugs by high risk-youth.

*Healthy People 2000:* The Public Health Service (PHS) is committed to achieving the health promotion and

disease prevention objectives of Healthy People 2000 a PHS-led national activity for setting priority areas. This Program Announcement, "Demonstration Grants for the Prevention of Alcohol and Other Drug Abuse Among High-Risk Youth", is related to the priority areas of Tobacco; Alcohol and Other Drugs; Family Planning; Mental Health and Mental Disorders; Violent and Abusive Behavior; Educational and Community Based Programs; and HIV Infection. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017-001-00474-0) or Healthy People 2000 (Summary report: Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

#### Program Goals

OSAP's overriding program goal is to decrease the incidence and prevalence of alcohol and other drug use among high-risk youth. The earlier the use of drugs, the greater the risk of drug disorders. (Robins & Przybeck, 1985). Strategies that prevent or delay the onset of alcohol and other drug problems and/or intervene early in the drug-using behavior of youth are part of the body of preventive interventions designed to decrease the incidence and prevalence of alcohol and other drug use among high risk youth. OSAP is establishing the following goals for projects submitted under this announcement:

- to identify and reduce factors in the individual, in the parents and extended family, school, peer group, and neighborhood that place youth at high risk for using alcohol and other drugs; and
- to increase resiliency/protective factors within youth, peer groups, and families to reduce the likelihood that youths will use alcohol and other drugs.

Proposed projects should have one or both of these goals and a set of specific measurable objectives consonant with the selected goal(s).

#### Program Emphasis

##### Prevention and Early Intervention

OSAP's program emphasis is on primary prevention and early intervention. OSAP will fund service demonstration projects that: (1) Propose and evaluate innovative prevention/early intervention strategies that hold promise for making a contribution to the knowledge base; or (2) Assess the effectiveness, replicability, and generalizability of existing promising



models for prevention and/or early intervention services for high-risk youth, relating to OSAP's Program Goals. Primary prevention focuses on youth who are not users of alcohol or other drugs but are at high risk for such activity. Early intervention focuses on youth who have an early involvement or are experimenting with alcohol, tobacco, marijuana, or other illicit drugs; or misuse substances such as inhalants, solvents, anabolic steroids, or prescription medications.

#### Multiple Risk/Multiple Level Interventions

OSAP will fund applications that target youths with multiple risk factors, and propose comprehensive, multilevel prevention/intervention strategies that address clearly specified risk factors. Research evidence suggests that substance abuse among youth is associated with multiple risk and resiliency factors that are inherent within the individual, the individual's environment, and the individual's interaction with his/her environment (Jones & Battjes, 1985). The likelihood that a young person will use and possibly become dependent on alcohol and other drugs appears to increase with an increase in the number and severity of the precursory risk factors; the impact of risk factors may be offset by resiliency/protective factors (ADAMHA Demand Reduction Report, 1990).

Risk and resiliency factors affecting high risk youth include individual (e.g., genetic, personality, skills development, physical and mental health) factors as well as those associated with significant individuals and environments in which high risk children and youth function (e.g., parents, immediate and extended family, peers, school, and neighborhood). Special stresses and protective factors for youth may also be associated with socio-economic status.

Any prevention or early intervention strategy is likely to be more effective if it focuses on reducing risk factors and enhancing resiliency factors in the individual and in the environment in which the individual functions (e.g. the parents and extended family, the school, the peer group, and the immediate neighborhood). Prevention/intervention models proposing to target risk factors only at the individual level are likely to be less effective than more comprehensive interventions (Bernard 1986).

### GUIDELINES FOR CONCEPTUALIZING THE PROPOSAL

#### Project Model

A logic model should underlie the conceptual development and preparation of the proposal. The logic model is a conceptual framework that links (1) basic assumptions about risk/protective factors, (2) mechanisms of intervention and (3) outcomes. In this model, the application:

- Specifies the risk factors and/or resiliency/protective factors at the individual, parent and family, peer group, school or neighborhood levels being addressed in the proposal; articulates the assumptions being made, that is, relates these risk or resiliency/protective factors to the use and abuse of alcohol and other drugs by youth; and justifies these assumptions with appropriate literature documentation;
- Relates the proposed strategies or interventions to specific risk/protective factors, that is, explains why these interventions should help reduce these risk factors or enhance these resiliency factors; and
- Identifies the measurable/observable outcomes that can logically be anticipated from the interventions.

Below is an example outline for conceptualizing and developing a demonstration grant application using the components of a logic model. It contains a *sample* of risk factors at the individual and environmental levels and relevant strategies that might be proposed by an applicant to deal with these risk factors in conjunction with outcomes that might be anticipated from the use of such intervention strategies.

#### Risk Factors

*Individual:* Failing academic performance; poor school bonding; no vocational objectives; psychological disorders such as conduct disorders, anti-social behavior, depression; learning disabilities.

*Parents and Extended Family:* Parents present poor model; parents have lost control of their children.

*Peer Group:* Peer gangs operate in school and exercise a powerful negative influence on students.

*School:* No drug/health information curriculum in school; school/teacher orientation toward students is not sensitive to racial/ethnic differences, causing low self-regard.

*Neighborhood:* Lack of bonding for neighborhood, (i.e. lack of pride and responsibility for the neighborhood) and lack of bonding to social institutions such as the schools, police department, etc.; presence of drug dealers, runners, and look-outs in the neighborhood.

#### Applicant Assumptions/Literature Findings

- A higher probability for the abuse of alcohol and other drugs has been observed among school failures and school dropouts.
- Substantial evidence indicates that peers influence substance use (Kandel, 1978; Evans et al. 1978; McAllister et al. 1980; Brook et al. 1983).
- The quality and consistency of family management, family communication, and parental role modeling have been found to affect children's use of substances (Baumrind, 1983; Patterson, 1982; Pennings and Barnes, 1982).
- Information concerning the deleterious effects of drugs is not known in the target population; such information, as part of a comprehensive program, will change attitudes and behavior in the use of substances.
- Low self-regard increases vulnerability toward dependency on alcohol and other drugs (findings relating self-esteem and early and later use of drugs are not conclusive; Jessor and Jessor, 1978).
- Childhood antisocial behaviors and conduct disorders, are strongly related to subsequent drug abuse and other serious behavior problems (Robins, 1978; Jessor & Jessor, 1978).

#### Strategies/Interventions

- Peer tutoring to improve academic performance.
- Program of parental skill building in communications and discipline.
- Early diagnosis and treatment of antecedent psychological problems.
- Remedial training for learning disabilities.
- After school and school associated clubs, sports, games, and recreation to improve school bonding.
- A program in cultural enrichment.
- Mentoring program involving successful community citizens to provide a positive, caring adult success model.
- Vocational planning and guidance; establish student entrepreneur program to clarify and establish educational and vocational objectives.
- Involve students in planning councils for establishing alternative peer groups to gangs and to drug runners that provide recognition and status to students for community service.
- Institute a drug/health curriculum in school, including AIDS prevention.
- Institute training to teachers in cultural sensitivity; plan and implement school-wide project on values as reflected by different cultural groups.



### Anticipated Consequences of the Interventions (i.e., Outcomes)

- Improved grades and academic competence.
- Improved school bonding as measured by decreased school dropout rate, truancy, tardiness, classroom disruptive behavior, vandalism.
- Enhanced appreciation of cultural roots and sense of self.
- Establishment of realistic long-term educational and vocational goals.
- Devaluation of gangs by student groups.
- Improved family functioning and parental control.
- Improved drug knowledge and attitudes toward the use of drugs; measurement of drug use if this is a drug-using population.

### Target Population

#### Risk Factors

Some of the factors that place a child at risk for using alcohol and other drugs are a function of the individual while some are a function of the physical, cultural, social, political, and economic environment in which the individual resides. It is the multiplicity of these risk factors that increases the probability of alcohol and other drug use among youth. High risk-youth are those who experience multiple risk factors. For a demonstration grant proposal, it is important to select risk factors that are amenable to change by some intervention strategy or to identify resiliency factors that may be enhanced by some intervention.

The Anti-Drug Act of 1988 (Pub. L. 100-690) defined "high-risk youth" as "any individual who has not attained the age of 21 years, who is at high risk of becoming or who has become a drug abuser or an alcohol abuser and who:

- (1) Is identified as a child of a substance abuser;
- (2) Is a victim of physical, sexual, or psychological abuse;
- (3) Has dropped out of school;
- (4) Has become pregnant;
- (5) Is economically disadvantaged;
- (6) Has committed a violent or delinquent act;
- (7) Has experienced mental health problems;
- (8) Has attempted suicide;
- (9) Has experienced long-term physical pain due to injury; or
- (10) Has experienced chronic failure in school."

Authority: Sec. 509A(f); Pub. L. 100-690.

This list, for the most part, presents categories of youth that have multiple factors at the individual and environmental levels that place them at

risk for the use of alcohol and other drugs. This list is neither exhaustive nor meant to exclude other documented groups of high-risk youth, for example, youth with a conduct disorder or with physical or sensory impairments. Of particular interest to OSAP is the category of youth with mental disorders/emotional problems since these children and youth are highly vulnerable to using alcohol and other drugs. The above list of high-risk youth groups is useful only to guide applicants in selecting high-risk populations. It is up to the applicant to identify the specific factors that place the youth in these groups at risk, at the same time, are amenable to change through an intervention program.

### Age Groups

Client-oriented interventions should be designed for specific developmental age groups to optimize effectiveness. The following age groups are recommended:

- 3-5 years (preschool).
- 6-11 years (elementary school).
- 12-14 years (middle school/school dropouts).
- 15-18 years (high school/school dropouts).
- 19-20 years (college or non-college).

If a single intervention is proposed for more than one developmental age group, the evaluation plan must indicate separate evaluations for each age group so that it is possible to assess independently the efficacy of the intervention on each developmental group.

### Comprehensiveness of Project

Current prevention theory recognizes that the use of alcohol and other drugs by youth is caused by multiple risk factors involving genetic, personality, environmental (parents, family, peer, school, playground, and immediate neighborhood) and behavioral variables. It is the intent of this program to encourage the planning and implementation of prevention and early intervention strategies that address the individual holistically by considering a multiplicity of risk factors for alcohol and other drug use at the individual as well as environment levels.

### Coordination with Other Agencies

The use of alcohol and other drugs, juvenile delinquency, conduct disorder, impaired and reckless driving, chronic school failure, dropping out of school, and sexual activity at an early age are problem behaviors frequently found in the same young people (Dryfoos, 1987; Jessor and Jessor, 1977). Depending upon which problem behavior is manifested, a

different human service system may be activated. Prevention and early intervention strategies may require coordination with other human service systems on behalf of the members of the target population, as appropriate, to effect optimal interventions to reduce risk factors or strengthen resiliency factors.

### Project Orientation

Projects supported under this announcement must be client oriented. That is, the focus of the project must be on reducing risk factors or enhancing specific resiliency/protective factors in a specific target population.

### Evaluation

The Anti-Drug Abuse Act of 1988 (Pub. L. 100-690) stipulates that priority should be given to prevention demonstration grant applications that employ appropriate strategies for evaluating the effectiveness of their proposed projects. OSAP will support only projects with a well-developed evaluation plan, explicitly described in the application. Evaluation plans will be expected to include both process and outcome evaluation.

Process evaluation is a quantitative and qualitative description of the intervention, target population, and staff of a project from inception. Process evaluation should clearly and comprehensively document the relationship of the resources and program activities to the project objectives so as to permit mid-project adjustments as needed to optimize project implementation and ultimate replication. The evaluation plan should include a description as to how the components of a process evaluation have been or will be obtained/collected and maintained. The following are components of a process evaluation:

1. *Problem:* The process by which the problem was defined as to (a) what is being demonstrated, (b) selection of risk factors to be addressed, (c) analysis of process by which population becomes at risk.

2. *Target Population:* Including demographic and other relevant characteristics, case finding and retention strategies.

3. *Goals and Objectives of the Project to be Evaluated:* The process by which the goals and objectives of the project to be evaluated were selected.

4. *Staffing Patterns:* Staff characteristics and qualifications including that of project director; supervision patterns; staff selection processes; staff activities and work schedule.



5. *Referral and Case Finding Patterns (if applicable):* Number, type, characteristics of referrals to and from project; participating agencies in project including the development of inter-organizational linkages with these agencies.

6. *Intervention:* Frequency, duration, type of contact; client flow, intervention materials, manuals, staff training; staff and client perceptions of the interventions and objectives of the project.

7. *Cost Data:* Funding sources; cost per service; cost per client.

8. *Evaluation Procedures:* Monitoring instruments, need and risk assessment instruments; feedback mechanisms to director, staff, community representatives.

9. *Generalizability of Program Findings for Program Dissemination:* Manuals and/or curricula that will be produced.

**Outcome Evaluation:** The evaluation plan should be detailed and clearly articulated. It should present an evaluation design appropriate to the project and of sufficient rigor to permit drawing valid conclusions concerning the effectiveness of the various intervention strategies. Outcome variables should be derived from the logic model.

In addition to individual project evaluation, OSAP is planning a national evaluation for selected demonstration projects funded by this grant program. The outcome measures that will be utilized during the course of the national evaluation will be developed by OSAP in concert with the national contractor and the grantees. Representatives grantees will be invited to work closely with the national evaluator and to provide data.

OSAP does not support prevention research or prevention research demonstrations. Accordingly, theory-driven, hypothesis-testing applications using rigorously controlled experimental designs are more appropriate for the National Institute on Drug Abuse (NIDA), the National Institute on Alcohol Abuse and Alcoholism (NIAAA), or the National Institute of Mental Health (NIMH). Individuals interested in prevention research or research demonstrations should contact NIDA, NIAAA, or NIMH which support prevention research.

#### General Information

##### Project Requirements

—Allow for two persons (project director and one other person to be designated by the project director) to

attend one 3-day national meeting in the Washington, DC area each year.

- Allow for three persons (project director, evaluator, and one other to attend one 2-day new grantee workshop during the first year of the grant.
- Include a commitment to cooperate fully in the development and conduct of a national evaluation of the grant program.
- Submit progress, expenditure, and final reports in accord with PHS Grants Policy requirements.
- Include letters of commitment and/or cooperative working agreements from all agencies participating in the project, specifying the terms of their commitment (e.g., allocation of resources, amount of staff participation, priority for project clients etc.). Participating agencies include those that may not be providing services but merely serve as the setting in which the intervention is being provided; e.g., schools.

##### Eligibility

Any public or nonprofit private entity is eligible to apply for support under the terms of this Program Announcement. Women and minority organizations are encouraged to apply.

Current and past recipients of OSAP demonstration grants are eligible to apply for support for completely new projects under the terms of this Program Announcement.

New projects include those that (a) test the feasibility of implementing a truly new innovative strategy that holds promise for expanding the state of the art in prevention/early intervention; or (b) assess program effectiveness, replicability, and generalizability of knowledge-based, established strategies.

Current and past OSAP grant recipients are eligible as a Type (a) project above if the combinations of strategies as well as the target population proposed for the new application differ markedly from that found in their current OSAP grant.

Current and past OSAP grant recipients are eligible as a Type (b) project above if an established strategy or combination of strategies is applied to a new target population.

OSAP grantees who are completing a three-year project are eligible to apply for a competitive renewal for one or two years of support to make specified improvements or refinements to their intervention strategies, accompanied by a rigorous process and outcome evaluation as described in this announcement concerning the effectiveness of the improved

prevention/early intervention strategies developed for the project.

The following chart summarizes the above information:

	Prevention strategies	Target population
Type (a).....	New.....	New.
Type (b).....	Established .....	New.
Competitive renewal.	New/modified; refined.	Current; no change.

##### Period of Support

Applicants for new projects may apply for a period up to 5 years support under this Program Announcement. Applicants applying for a competitive renewal of a 3-year grant may request up to 2 additional years for a total of 5 years, provided the proposal meets the conditions of this Program Announcement.

Each year's awards will be made subject to continued availability of funds and progress achieved.

##### Availability of Funds

It is estimated that approximately \$9 million will be available to support approximately 30-35 grants under this announcement in Fiscal Year 1992. However, the exact amount of funding available will depend upon appropriated funds, the quality of proposals, and program priorities at the time of award.

##### Terms and Conditions of Support

Grant funds may be used for expenses clearly related and necessary to carry out the described project, including both direct costs that can be specifically identified with the project and allowable indirect costs of the organization.

Funds cannot be used to supplant current funding for existing activities.

Allowable items of expenditure for which grant support may be requested include:

- Salaries, wages, and fringe benefits of professional and other supporting staff engaged in the project activities;
- Travel directly related to carrying out activities under the approved project;
- Supplies, communications, and rental of space directly related to approved project activities;
- Contracts for performance of activities under the approved project; and
- Other such items necessary to support project activities.

##### Indirect Costs:

In order for programs to be able to recover allowable indirect costs, it is



necessary for the organization to negotiate and establish an indirect cost rate unless such a rate has already been established. For information and assistance regarding the submission of an indirect cost rate proposal, contact the Director, Division of Cost Allocation for your DHHS region. The application kit contains a list of the names and addresses of these Directors, by DHHS Region (see "Offices Negotiating Indirect Cost Rates").

Grants must be administered in accordance with the PHS Grants Policy Statement (Rev. October 1, 1990).

Federal regulations at title 45 CFR parts 74 and 92, generic requirements concerning the administration of grants, are applicable to these awards.

#### *Receipt and Review Schedule*

Receipt date	IRG review	Earliest start date
May 20, 1991..... and thereafter with the regular receipt dates of: September 20..... January 20 ..... May 20 .....	September/ October 1991.  January/ February. May/June..... September/ October.	March 1992.  July. December. March.

#### *Consequences of Late Submission*

Applications must be received by the Division of Research Grants (DRG), NIH, by the dates specified above. If the receipt date falls on a holiday, it will be extended to the following work day. Applications received after the above receipt dates may be assigned to the next review cycle or returned to the applicant without review.

#### *Application Characteristics*

Applications must be complete and contain all information needed for review. Except where otherwise required by these instructions (e.g., comments from the State's Single Point of Contact), supplementary or corrective material pertinent to an application will not be accepted after the specified receipt date unless specifically solicited by or agreed to in prior discussion with the Executive Secretary of the Initial Review Group. Because there is no guarantee that such later material will be accepted or that reviewers will consider such late material, it is important that the application be complete at the time of submission.

The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior

related activities of the applicant. It should be well organized succinct, and contain all information necessary for reviewers to understand the project fully.

The narrative (sections A through E) may not exceed 25 single-spaced pages. This is exclusive of the abstract, the Index page, and the one-page Introduction section for a Revised application.

The Project Management Plan (section F) and Resources (section G), together, may not exceed a total of ten pages. Applications exceeding these pages limits (that is, a total of 35 pages for sections A through G) will not be accepted for review.

Appendices will not be counted toward the page limits. Appendices may be attached for technical or specialized materials but should not be used merely to extend the narrative.

#### *Abstract*

The narrative section of the application must be preceded by a single spaced abstract not to exceed 30 lines. It should identify the applicant by name and type of applicant (e.g., private nonprofit); indicate what is being demonstrated; describe the logic model for the project (i.e., specify the risk factors that will be addressed, the proposed intervention, and the anticipated outcomes); specify the demographic and other characteristics of the target population; and identify the locale for the project (e.g., urban, rural, housing development, etc.). Competing renewal applications from demonstration projects currently funded by OSAP should be identified as such in the first sentence of the abstract, and should include the previously assigned OSAP grant number (e.g., H86 SP—). The abstract will not be counted toward the total page limit of the narrative.

#### *Index*

Immediately following the abstract page, the application shall include an index page to guide the reader to each section of the application.

#### *Revised Applications*

If the application is a revision of one previously submitted and reviewed, please follow the instructions below. Applicants may wish to consult with program staff before revising and resubmitting.

Resubmitted applications which are essentially identical to prior ones will not be accepted and will be returned without review. Therefore, make sure the revisions are significant and that revisions to the applications are readily identifiable, as explained below. Also, if

revising an application that was submitted in response to a previous RFA, be sure that the application is complete and responsible to the specific requirements of the present Program Announcement.

In an Introduction section (not to exceed two pages) that precedes the Index, identify the original application by number and indicate when it was submitted. If there has been a change from the original project director, please note that as well. For example: "This is a revision of an application (1 H86 SP12345-01) which was submitted for the—receipt date. The project director for that submission was —."

—Summarize in the Introduction any substantial additions, deletions, and changes that have been made. Include responses to questions or criticisms found in the previous summary statement. The Introduction will not be counted toward the total page limit of the application.

—Within the text of the proposal, highlight these changes by appropriate bracketing, indenting, or changing of typography. However, do not indicate changes by underlining or shading. Incorporate in the Background and Significance section any work done since the prior version was submitted.

A revised application will be returned if an introduction is not included and/or substantial revisions are not clearly apparent.

Acceptance of a revised application automatically withdraws the prior version.

#### *Intergovernmental Review*

The intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100, are applicable to this program. Through this process, States, in consultation with local governments, are provided the opportunity to review and comment on applications for Federal financial assistance. Applicants should contact the State's Single Point of Contact (SPOC) as early as possible to determine the State's applicable review procedure. A current listing of all SPOCs is enclosed with the application kit. The following States do not participate in the intergovernmental review of programs under Executive Order 12372: Alaska, Idaho, Nebraska, Kansas, Louisiana, Minnesota, and Virginia. Applicants should note that comments received from the State will be considered as a factor in the review of their applications.

SPOC comments should be sent to the: Acting Director, Office of Program



Coordination and Review, Office for Substance Abuse Prevention, 5600 Fishers Lane, Rockwall II Building, Room 630, Rockville, Maryland 20857 no later than 60 days after the relevant receipt date. The OSAP does not guarantee to accommodate or explain comments from the SPOC that are received after the 60-day cut-off.

The application must include a copy of a letter sent to the Single State Agency (SSA) briefly describing the grant proposal. Evidence of support for the proposed project from the SSA for Drug and/or Alcohol Abuse will be used in making award decisions (See Award Criteria Section).

#### Application Procedures

Application kits (PHS 5161-1; rev. 3/89) containing guidance for completing OSAP demonstration grant applications are available from: National Clearinghouse for Alcohol and Drug Information (NCADI) Post Office Box 2345, Rockville, Maryland 20852, 1-800-729-6686.

All applicants should use Form PHS 5161-1 which contains Standard Form 424. The title of the announcement "Demonstration Grants for the Prevention of Alcohol and Other Drug Abuse Among High-Risk Youth" should be typed in Item 10 of the face page of the PHS 5161-1.

Applicants should return a complete application consisting of the signed original form PHS 5161-1 and the set of appendices and two (2) permanent, legible copies of all of these documents to: OSAP Programs, Division of Research Grants, NIH, 5333 Westbard Avenue, Bethesda, Maryland 20892\*.

#### Important

The mailing envelope (including that provided by an express carrier) must be clearly marked "OSAP High-Risk Youth Demonstration Grants".

The Following Sections A Through I Replace the General Instructions for Completing the Program Narrative of the Application Form PHS 5161-1 (Rev. 3/89)

The instructions on completing sections A through I apply to all applicants (new as well as previously OSAP-funded grantees) who are: (1) Proposing an innovative approach, or (2) assessing the effectiveness, replicability, and generalizability of an existing promising model for the prevention of and/or early intervention against alcohol and other drug use among high-risk youth. It also applies to applicants

seeking a competitive renewal of their grant.

**A. Specific Aims.** Indicate whether this proposal is to (1) test the feasibility of implementing innovative prevention strategies; or (2) assess the effectiveness, replicability, and generalizability of knowledge-based, established strategies for the prevention of and/or early intervention against alcohol and other drug use among high-risk youth. If this application is proposing an innovative strategy, it is incumbent on the applicant to explain from the literature review what makes this approach innovative. If this application is designed to assess effectiveness, generalizability, and replicability of established strategies, discuss what is known about the established strategies and how this application addresses generalizability and replicability of those strategies.

Using a logic model, describe what is being demonstrated in this project (See section entitled Project Model, above). The conceptual framework underlying this project that links the basic assumptions about risk/protective factors, the proposed interventions, and the anticipated outcomes should be discussed fully in this section.

Applicants should address the following types of questions in this section of the application:

Which risk factors are expected to be reduced by the intervention proposed by this project? Which resiliency/protective factors will be enhanced? What assumptions are being made concerning the impact of these risk/resiliency factors? Are these assumptions literature based? If so, cite references.

How are the outcome indices identified in the logic model related to the OSAP goal to decrease incidence and prevalence of the use of substances among high-risk youth?

What is the rationale for each of the intervention strategies? What are they expected to accomplish? Where have they been used previously? Why should they be expected to reduce risk factors or enhance resiliency/protective factors?

Suggested length of section: Three to five pages.

**B. Background and Significance.** This section should sketch the background that led to the proposed project. Cite current literature on the risk/resiliency factors to be addressed, the effectiveness of the type of interventions to be implemented, and the gaps in the knowledge base that the project is designed to fill. A brief and focused review of the literature, as well as any relevant prior work, observations, or experiences of the applicant in

prevention with the proposed target population, must be included in this section.

Previous or current OSAP grantees applying for a new grant must describe the intervention strategies and age, race/ethnicity and other characteristics of the target population served in the current/previous grant and how and in what ways this application differs from what has already been demonstrated in the previous grant.

Competing renewal applications must include a detailed report on the findings (what has been learned to date) from the previous grant and how proposed improvements justify continuation of the project in order to assess an anticipated higher level of effectiveness of this model.

Suggested length of section: Five to six pages.

**C. Target Population.** Describe the anticipated composition of your target population with respect to face/ethnicity; age development group(s); sex; preponderance of risk factors; urban/rural/suburban population(s); socioeconomic level; and any special characteristics not mentioned. Explain why this population was selected and specify the estimated number and kind of persons that will be served.

Suggested length of section: One to two pages.

**D. Approach/Method.** Clearly describe, in some detail, the components of the proposed intervention. The only page length guideline that can be given is that this section forms to core of the proposal and sufficient detail should be offered to provide reviewers a clear understanding of the total project; how the proposed intervention is linked to the risk/resiliency factors being addressed; and why these strategies are likely to be effective. Applications should include the following information in this section:

- Procedures for identifying, accessing, recruiting, retaining, and following up the proposed target group with treatment referrals as appropriate.
- Where appropriate, procedures for attending to the unique needs and concerns of members of cultural and ethnic minority groups within the target populations.
- Plans for the implementation of all strategies employed in the intervention, detailing dosage, that is, how much of each intervention is proposed per member of target population.
- Plans for coordination program, management, and data collection among the sites, if there are multiple sites in the project.

\*If an overnight carrier or Express Mail is being used, the zip code is 20916.



- Plans for, and evidence of, coordination with existing local, State, and/or Federal programs, (e.g., Community Partnership Demonstration Grant operating in the community), if appropriate.

- Specific working agreements or commitments from participating agencies in the project (pending funding) should be included in the appendix, where appropriate. Such agreements should be specific with respect to the commitment of resources (e.g., personnel, referral acceptance of clients, access and acceptability to the target population). Resubmissions should have updated working agreements. Justification should be provided if no such working agreements are included. Evidence of existing or previous joint efforts should be submitted, if available.

**E. Evaluation Plan.** OSAP will support only projects with well-developed program evaluation plans. Such plans will be expected to include process evaluation strategies sufficient to facilitate replication of the project if the approach proves promising.

Process evaluation involves the design and collection of data that permits a quantitative and qualitative description of the implementation of the project (see earlier discussion of Process Evaluation).

Proposals must also include plans for an outcome evaluation. The purpose of the outcome evaluation is to demonstrate the extent to which the intervention(s) had effects on the target population. Outcome indices will vary as a function of the objectives of the project. Applications should include a description of the evaluation design, proposed instruments (with copies of the instruments included in the appendices) or plan for developing such instruments, a tentative schedule and the procedures for collecting data, and the data analysis plan.

Depending on the complexity of the proposed program, and the degree to which early program activities are devoted to implementation and stabilization of programs, it may be unrealistic to expect evidence of effectiveness during the first year of funding. However, it is advisable to collect evaluation data on a trial or pilot basis during the first year of the demonstration program to test the evaluation procedures and protocol. Some types of evaluation data (e.g., impact indices) should be collected in the first year to serve as baseline information for comparative analyses.

Projects are expected to have qualified evaluators who participate in the project from its initial design and who retain a continuing relationship

with the project throughout its grant life. It is estimated that at least 15 percent of the cost of a project is needed for evaluation activities, but that the true cost of evaluation should be determined by the size of the program and the complexity of the evaluation. The application must include a description of the resources allocated to evaluation. Applicants are encouraged to explore the possibility of in-kind support and cost-sharing with universities or public or private organizations to enhance the project's evaluation component.

Applications considered to lack a sufficiently detailed evaluation plan or to have an inadequate evaluation design will be judged non-competitive and removed from further review.

Suggested section length: Four to five pages.

**F. Project Management Plan.** The Project Management Plan must include a description of the tasks to be performed, a schedule of the tasks, and their relationship to each other and to the program goals. The individual/staff positions responsible for each task should be identified. Describe the role and responsibilities of the project director in implementing and managing the overall project. Biographical sketches of proposed key personnel should be included in a readily identifiable appendix.

The management plan should show how tasks are related to the project goals and objectives, as well as to the management of the project. A PERT or Gantt chart and/or flow diagrams may be helpful to display these tasks.

**1. Organizational Structure.** A narrative description of the organizational structure of the proposed demonstration project should indicate the organizational relationships and responsibilities of the project director and each project unit or activity. The responsibilities and composition of governing or supervisory boards should be included, where applicable. Organizational relationships between the applicant and other State/local level health and human services agencies should be briefly described, if these relate to the proposed project. An organizational chart should be provided which illustrates relationships and lines of responsibility.

**2. Organizational Capability.** Applicants should provide evidence that the organization is capable of implementing the proposed project. Documentation of experience in similar or other relevant activities, access to the target population(s), expertise in service delivery and evaluation, experience in developing and effectively using inter-organizational agreements, and other

indicators of capability should be provided as appropriate. The use of external expertise (e.g., evaluation consultants) is encouraged when needed and not available within the organization.

**3. Staffing.** Briefly describe the jobs/roles that will make up the proposed project. Job descriptions should be included in the appendices for each key professional position identified in the proposed budget. Job descriptions should include: job title, description of duties and responsibilities, qualifications for the position, supervisory relationships, skills and knowledge required, prior experience required, educational background required, and job site (if appropriate). Include as appendices resumes for all key staff and consultants proposed for the project. These resumes should include names, educational background, major professional interest(s), membership in professional organizations, professional experience, honors received, and recent relevant publications. Experience and/or training pertinent to the proposed project should be highlighted.

This portion of the management plan should include a brief description of staff recruitment and selection that addresses the project's need for staff differing with respect to discipline, skills, gender, personal qualities, race/ethnicity, and culture to serve the target population.

**G. Resources.** Describe the facilities, equipment, service capabilities, and other resources available to the project. Justify requested resources.

Provide a line item justification for the budget.

Identify grant writer and indicate the relationship of grant writer to the applicant organization.

**H. Other Support.** "Other support" refers to all current or pending support related to this application. Applicant organizations are reminded of the necessity to provide full and reliable information regarding "other support," i.e., all Federal and non-Federal active or pending support. Applicants should be cognizant that serious consequences could result if failure to provide complete and accurate information is construed as misleading to PHS and could therefore lead to delay in the processing of the application. In signing the face page of the application, the authorized representative of the applicant organization certifies that the application information is accurate and complete.

For the applicant organization and key organizations that are collaborating



in this proposed project, all currently active support and any applications/proposals pending review or funding that relate to the project should be listed. If none, state "none."

For all active and pending support listed, also provide the following information:

- (1) Source of support (including identifying number and title).
- (2) Dates of entire project period.
- (3) Annual direct costs supported/requested.
- (4) Brief description of the project.
- (5) Whether project overlaps, duplicates, or is being supplemented by the present application; delineate and justify the nature and extent of any programmatic and/or budgetary overlaps.

This information must be designated section H and labeled "Other Support". This section will not be counted toward the total page limit of the application.

**I. Confidentiality and Other Ethical Concerns Regarding Target Population(s).** Applicants and awardees are expected to make appropriate plans and take necessary steps to deal with potential ethical issues concerning participants in proposed projects. This section of the application should discuss pertinent ethical issues such as confidentiality, privacy, and voluntariness of participation, and describe plans to address these issues. Section I will not be counted toward the total page limit of the application.

A major area of concern is confidentiality. Awardees must agree to maintain the confidentiality of alcohol and drug abuse client data in accordance with the Code of Federal Regulations, 42 CFR part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

In those projects where individually identifiable, private information will be collected to achieve project objectives and/or carry out the proposed evaluation, the application must clearly identify and describe the population(s) for which such information will be collected, including their age(s), sex, ethnicity, and health status. In addition, this section of the application must include a description of (1) the sources and kinds of data that are to be obtained and maintained in identifiable form, and (2) the procedures that will be implemented to ensure the privacy and confidentiality of these records (e.g., using code numbers instead of participants' names on data records, limiting access to records, maintaining security for records). Applicants should consider minimizing the time that identifiers are kept, consistent with the project's objectives.

Applicants must also discuss how they are planning to deal with other potential concerns about ethical issues. This section of the application should (1) identify any potential physical (including medical), psychological, legal, social (e.g., labeling), or other risks that participation in the project might present; (2) discuss what steps will be implemented to eliminate or minimize these risks; (3) discuss what procedures will be followed in obtaining assent or consent from participants and, if relevant, parental consent; and (4) specify what information will be provided regarding the nature, purpose, requirements, and potential risks of their participation.

Awardees may be required to obtain written informed consent from participants and/or their parents or legal guardians if participation in the project poses potential physical (including medical), psychological, legal, social (e.g., labeling), or other risks. This section of the application should indicate whether it is planned to obtain informed consent from participants and/or their parents or legal guardians and should describe the procedures to be followed in obtaining such consent, including the circumstances under which agreement to participate will be sought and the information that will be provided regarding the voluntary nature of the participation, the right of participants to withdraw from the project without prejudice, and procedures for assuring confidentiality and minimizing potential risks. Copies of sample consent forms should be included in an appendix.

#### Review Process

Applications submitted in response to this Program Announcement will be reviewed for technical merit in accordance with established PHS/ADAMHA review procedures for grants. The Division of Research Grants, NIH, serves as a central point for the receipt of applications. Applications will be screened for completeness and compliance with instructions for submission. An application will be considered incomplete and returned if it is illegible, if it fails to follow the instructions (e.g., exceeds the page limits or omits required sections), or if the material presented is insufficient to permit an adequate review. Returned applications will not be accepted for this review cycle, but (if applicable) may be corrected and submitted for the next receipt/review cycle.

Applications considered complete will enter a multi-stage review process. In the first stage, the evaluation component will be assessed. Applications judged to

be lacking in the measures or method to assess the proposed project will be considered noncompetitive and removed from further review consideration. OSAP will notify and advise the applicant and the organization's business official of this action.

Applications judged to be competitive will be reviewed for technical merit by an Initial Review Group (IRG) composed primarily of non-Federal experts. OSAP reserves the right to conduct the multi-stage review at one time or in two discrete steps. Notification of the IRG recommendation on technical merit will be sent to the applicant. In addition, all applications receiving complete IRG review may receive a second-level review by the Advisory Committee on Substance Abuse Prevention, whose review may be based on policy considerations as well as technical merit.

#### Review Criteria

Criteria for technical merit review of applications will include the following:

- Relevance of project objectives to OSAP program goals, as stated in this announcement.
- Potential contribution to the knowledge base and state of the art in prevention/early intervention of alcohol and other drug abuse among high risk youth, including potential for replicability at other sites.
- Clarity and appropriateness of the conceptual framework (logic model) linking basic assumptions about risk/protective factors, intervention strategies, and outcomes in relation to project objectives.
- Clarity, appropriateness, and comprehensiveness of plans for process and outcome evaluation, including adequate allocation of resources and selection of qualified evaluators.\*
- Appropriateness and soundness of procedures for identifying, gaining access to, recruiting, retaining, and following up the target population(s); and adequacy of procedures to be implemented to ensure confidentiality of client data.
- Adequacy and appropriateness of the intervention(s) to age-development levels and to specified individuals and environmental risk factors, including attention to comorbidity issues.
- Evidence of sensitivity to racial, ethnic, and cultural issues in relation to all aspects of the project, including intervention, evaluation, and staffing.

\* Reviewers will be directed to give extra weight to this criterion as outlined in section E, Evaluation Plan.



- Feasibility of proposed project within the resources and time frames proposed; appropriateness of the proposed budget; and inclusion of specific commitments or working agreements from cooperating agencies, including agencies that may be providing services and/or the setting for these services (e.g. schools).
- Adequacy and soundness of the staffing and project management plans, including evidence of the organizations capability and the experience and qualifications of the project director, consultants, and other key staff, to implement the project successfully.

#### Award Criteria

Applications will be considered for funding on the basis of overall technical merit of the project as determined by the review process.

Other criteria will include:

- Geographical and urban/rural balance;
- Adequate coverage of racial, ethnic, cultural minority populations and various risk groups;
- Programmatic balance among types of intervention strategies;
- Availability of funds; and
- Evidence of support for the proposed project from the Single State Authority for Drug and/or Alcohol Abuse.

Funding priority will be given to projects that address:

- (1) Drug use prevention/intervention issues for Black male youth, and/or
- (2) Co-morbid risk factors such as conduct disorders and suicide.

#### Contacts for Additional Information

Questions concerning program issues or grants management issues may be directed to the office listed below:

Division of Demonstrations and Evaluation, Office for Substance Abuse Prevention, 5600 Fishers Lane, Rockwall II Building, room 9B-03, Rockville, MD 20857, (301) 443-0353.

Grants Management Unit, Office of Substance Abuse Prevention, 5600 Fishers Lane, Rockwall II Building, room 640, Rockville, MD 20857, (301) 443-3958.

The reporting requirements contained in this announcement are covered under the Paperwork Reduction Act of 1980, Public Law 96-511, OMB Approval Number 0937-0189.

The statutory authority for this program is section 509A of the Public Health Service Act, as amended by section 2051 of the Anti-Drug Abuse Act of 1988 (P.L. 100-690).

(The Catalog of Federal Domestic Assistance number for this program is 93.144.)

Joseph R. Leone,

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#### Demonstration Grants for the Development of Model Projects for Pregnant and Postpartum Women and Their Infants

**AGENCY:** Office for Substance Abuse Prevention, HHS.

**ACTION:** Program announcement.

#### Introduction and Background

This Program Announcement reflects a considerable shift in approach from previous OSAP announcements concerned with pregnant and postpartum women and their infants since it requires far more rigor in the conceptualization and design of projects and in the evaluation plans. The proposals submitted under this Program Announcement must be focused on strategies directed at prevention, early intervention, and treatment for the use/abuse of alcohol and other drugs even though they may be implemented in service settings.

In October 1988, Congress passed the Anti-Drug Abuse Act, Public Law 100-690. Sections 509F and 509G of the PHS Act, as amended by Public Law 100-690 authorize grants to public and private profit and nonprofit entities to demonstrate model projects for substance-using (alcohol and other drug) pregnant and postpartum women and their infants. In accordance with this legislation, the Office for Substance Abuse Prevention (OSAP) has funded projects that focus on prevention, education, and treatment located in community-based, inpatient, outpatient, and residential settings. The continuing need to develop effective prevention strategies and innovative interventions leads to this Program Announcement for a further development of demonstration projects for substance-using pregnant and postpartum women and their infants.

The Maternal and Child Health Bureau (MCHB), of the Health Resources and Services Administration—which has a broad, ongoing mandate to promote the health of mothers and infants—has joined with OSAP in planning and providing funds for these demonstrations as a collaborative, inter-agency grant program.

There is increased clinical and research evidence of the wide array of

potentially unfavorable consequences that maternal use of alcohol and other drugs during pregnancy can have on the fetus, the newborn, and the developing child. These effects include retarded fetal growth, premature and/or complicated delivery, low birth weight, infant mortality, drug-specific neonatal withdrawal syndromes, and infant mental and physical developmental deficits. Even with more specifically targeted obstetrical care, many infants born to mothers using alcohol and other drugs present difficult problems for caregivers and the mothers of those infants. These babies may show signs of developmental problems including poor motor control, difficulty learning, and, as they mature, appear either hyperactive or hypoactive in response to their environment. The consequences of early mother-child bonding problems and the impact of voluntary and involuntary separations require attention.

Many women using alcohol and other drugs during pregnancy have multiple needs, including the need for alcohol and drug abuse treatment, health care, and a variety of psychosocial supports. They may often face simultaneous stresses of poverty, addiction, and new motherhood with inadequate familial and social resources. Also, these women and their infants are among the groups most vulnerable to AIDS/HIV. In addition, service delivery systems are often inadequate and poorly coordinated. For example, many alcohol and other drug treatment programs refuse to serve pregnant women. Conversely, many maternal health care facilities are inadequately prepared for the problems of alcohol- and other drug-using women. There is often a failure to recognize the coexistence of mental illness with alcohol and other drug use. As a result, many clients fail to respond to limited interventions. Many substances-using pregnant women receive prenatal care very late or not at all during their pregnancy. It is important to develop strategies that will identify and recruit this population into treatment effectively. Furthermore, alcohol- and other drug using-women are often difficult to locate for purposes of follow-up after delivery, thus limiting the duration of interventions that may have an impact on the woman's future and subsequent pregnancies. Many of those who are located prove reluctant to receive services. Even after successful identification and recruitment, program attrition rates are usually high.

Despite these difficulties, it is important that new and continuing efforts be made to minimize fetal exposure effects. Toward this end, it is



necessary to coordinate a variety of service delivery systems and/or to provide new or expanded services where gaps exist. Such services must include a continuum of therapeutic programs, comprehensive supportive services, and medical care in a readily accessible form. Service providers need the benefit of a longitudinal perspective that takes into account the needs of the women and their babies before, during, and after delivery. Extensive community outreach and retention efforts must be made to eliminate existing barriers to treatment.

This Program Announcement solicits applications for service demonstration projects that propose promising models or innovative approaches to addressing the issues outlined above. Among many areas that have been identified as requiring continuing attention, model development, and replication are strategies for promoting client retention in prenatal care, the impact of different models of out-patient versus residential treatment services, outreach, the importance of early bonding between mother and infant, the role of the father and extended family in subsequent prevention of maternal alcohol and other drug use, the factors contributing to recidivism, the coexistence of mental illness and alcohol or other drug use (comorbidity), the impact of the exposure to alcohol and other drugs on siblings through family disruption and other disruptions, and the longer term developmental consequences for children.

All projects will be required to have a well-developed program evaluation plan that is derived from, and that applies to, all of the project's activities. Applicants should propose approaches with a sound conceptual basis consistent with state-of-the-art practices, knowledge, and theories in the fields of prevention and treatment. Applicants are encouraged to develop specific project designs appropriate for the purpose of assessing the efficacy of particular interventions.

OSAP does not support *prevention research or prevention research demonstrations*. Accordingly, theory-driven, hypothesis-testing applications using rigorously controlled experimental designs are more appropriate for the National Institute on Drug Abuse (NIDA), the National Institute on Alcohol Abuse and Alcoholism (NIAAA), or the National Institute of Mental Health (NIMH). Individuals interested in prevention research or research demonstrations should contact NIDA, NIAAA, or NIMH which support prevention research.

The same application may not be submitted to more than one PHS component. In particular, the same application may not be submitted to NIAAA, NIDA, the Office for Treatment Improvement (OTI), and OSAP for the same programmatic activities and/or the same client population.

Healthy People 2000: The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2000*, a PHS-led national activity for setting priority areas. This Program Announcement, Demonstration Grants for the Development of Model Projects for Pregnant and Postpartum Women and Their Infants, is related to the priority areas of Tobacco; Alcohol and Other Drugs; Family Planning; Mental Health and Mental Disorders; Maternal and Infant Health; Sexually Transmitted Diseases; Educational and Community Based Programs; and HIV Infection. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report: Stock No. 017-001-00474-0) or *Healthy People 2000* (Summary report: Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

#### Program Goals

The goals of this announcement are to identify and fund a number of programs to develop and implement promising or innovative service programs and activities with demonstrable outcomes designed to:

- Promote the involvement and coordinated participation of multiple organizations in the delivery of integrated, comprehensive services for alcohol- and other drug-using pregnant and postpartum women, and their infants
- Increase the availability and accessibility of prevention, early intervention, and treatment services for these populations
- Decrease the incidence and prevalence of drug and alcohol use among pregnant and postpartum women
- Reduce the incidence of abuse and neglect among children of alcohol- and other drug-using mothers
- Improve the birth outcomes and reduce the infant mortality of women who use alcohol and other drugs during pregnancy and decrease the incidence of infants affected by maternal substance use
- Reduce the severity of impairment among children born to substance using women

- Improve provider recognition of co-occurring mental and substance abuse disorders (i.e., co-morbidity)
- Increase the availability, accessibility, and coordination of comprehensive mental health and substance abuse programs for pregnant and postpartum women who have co-occurring mental and substance abuse disorders

The specific aims and objectives of a project need not address *all* of these program goals. However, proposed projects should be consonant with one or more of these goals.

#### Program Emphasis and Scope

##### A. Populations

The ultimate target of projects should be potential or current alcohol- and other drug-using pregnant and postpartum women, and their infants with priority for low-income women. The pattern of drug use for the target population must be definable, and the nature of the impact of socio-economic and cultural factors on the population should be elaborated. These potential clients may be accessed directly or through other populations or programs, including women entering the family planning process; women utilizing day care services; women coming to the attention of school personnel; male partners of alcohol and other drug using pregnant or postpartum women; sexually and physically abused women; women with mental illness and alcohol and other drug use (co-morbidity), leading to an impairment in functioning that is not helped by addressing either problem alone; foster parents of infants affected by maternal drug use; physical and mental health service providers; Head Start service providers; and a variety of social service agents who have contact with the target populations.

##### B. Settings

Project activities may be community-based or may be located in inpatient, outpatient, or residential settings.

##### C. Modes of Intervention

Projects incorporating prevention (including education), early intervention, and/or treatment are eligible. The interventions should be appropriate to the ethnic, racial, and cultural backgrounds of the population being addressed.

##### D. Target Substances

All non-prescribed drugs that may have a deleterious effect on the fetus, including alcohol and tobacco, are eligible targets for intervention. A



project may focus on poly-drug use or the use of a single drug if the rationale for the single drug focus is appropriately defined for the target population.

#### E. Needs

Applicants are encouraged to address the complex and varied needs of the target populations in a comprehensive manner. These needs may be broadly categorized as:

1. Biological/physical (e.g., detoxification, dietary, pediatric, obstetrical, AIDS/HIV).
2. Psychological (e.g., support, treatment for anxiety, depression, low self-esteem).
3. Support services (e.g., housing, child care, transportation to facilitate the receipt of services, financial incentives).
4. Informational and educational—multiple skills and behaviors (e.g., prenatal and postpartum health, substance use, parenting).

In many cases, the achievement of desired outcomes will require that attention be paid to all of these need categories.

While OSAP will fund a variety of approaches, experience indicates that the diverse needs of the target population(s) and the frequent gaps in the service delivery systems require an emphasis on programs that provide or coordinate a comprehensive service system.

Applicants are encouraged to create processes that will result in the coordinated use of existing services. Development of new service components should be limited to situations where such services do not currently exist, where they are inadequate or where a demonstrably unique type of service is employed. Demonstration programs coordinate their efforts with other appropriate Federal and State funded programs, such as the OSAP Community Partnership Program, Head Start programs and centers, the Maternal and Child Health Bureau, and other programs funded by the Department of Health and Human Services. In the absence of such programs, documentation of the gaps should be provided. Systems of comprehensive services should be "user friendly" or otherwise structured to ensure that vulnerable clients actually receive the services. One means of increasing the use of services is the involvement of existing social networks and natural support systems (including family, neighbors, religious organizations).

It is also recognized that, in many communities, existing services are inadequate or even non-existent. Where such gaps exist, applicants may propose

the addition of new services, or the expansion or augmentation of existing services if they are incomplete or not meeting the existing levels of need. Applicants may therefore propose any of the following types of projects (or combinations thereof):

1. Coordination and integration of existing services.
2. Outreach—identification of the target populations and encouragement (e.g., social or logistical support) for provisions of services.
3. Financial and other incentives that increase the accessibility and acceptance of services, such as child care and transportation to programs.
4. Augmentation of existing services (e.g., the addition of prenatal and/or postpartum care to drug treatment programs or vice versa).
5. The creation of new comprehensive services.

An outreach approach with no service delivery component would only be acceptable if the applicant could provide evidence that sufficient services are already in place. Conversely, the creation of entirely new comprehensive services would only be acceptable if the applicant can demonstrate there are no appropriate existing or sufficient services to address the priority needs.

#### Activities for Which Grant Support is Available

Proposed activities should be consistent with the orientation described above, and be appropriate to the cultural, ethnic and racial composition of the population being served. Examples of such activities, to be implemented individually or (preferably) in some combination, may include, but are not limited to:

##### Primary prevention

- Information and education on alcohol and other drug use at the point of family planning.
- Forms of public education concerning the risks of alcohol and other drug use during pregnancy linked to other programmatic efforts.

##### Intervention with pregnant and postpartum women

- Routine implementation of effective screening of pregnant women for past and present alcohol use and other drug use and for co-occurring mental disorders
- Innovative methods of outreach to identify and recruit the large populations for services, preferably in the early stages of pregnancy
- Integration and coordination of alcohol and other drug treatment with prenatal and postpartum health care

- Psychological and emotional support for pregnant and/or postpartum alcohol and drug using women
- Education and skill-building designed to increase the likelihood of positive familial, social and vocational functioning (e.g., parenting skills, job-seeking skills)
- Support services (e.g., child care, transportation) to facilitate women's use of other services
- Advocacy for the assurance of care

#### Infant-Oriented Interventions

- Direct intervention/treatment/rehabilitation with infants in order to reduce the impact of maternal substance use
- Informational, emotional support and resources for biological, foster parents or other guardians of infants affected by maternal substance use (follow-up services)

#### Service delivery strategies

- Coordination—for purposes of identification and service delivery—with other likely points of access for vulnerable women (e.g., shelters, AFDC, WIC programs, crisis pregnancy centers, public housing, centers for battered women, Head Start centers, jails, AIDS/HIV prevention programs)
- Innovative, integrated services for pregnant and postpartum women with co-occurring mental and substance abuse disorders
- Involvement of significant others as direct intervention targets or as resources of aiding in the outreach and service delivery processes for women
- Co-location or multiple locations (e.g., satellite centers, extension services, "one-stop shopping") to increase client access to services and to facilitate service delivery
- Innovative strategies (e.g., case management) to ensure the coordinated utilization of generally unrelated service systems
- Targeted services to prevent recurrence of substance-abusing behavior
- Other services to eliminate barriers to service that would increase the time a client stays in treatment

#### Personnel strategies

- Inter—organizational personnel exchange for the creation of interdisciplinary teams within service settings
- Expanded roles for professionals and other caregivers in encouraging the development of comprehensive service systems



- Continuing education of providers regarding the needs and intervention strategies appropriate for the target populations
- Utilization of trained caregivers recruited from the community (natural helpers)
- Educational programs of primary care providers to improve recognition and referral of pregnant and postpartum women with co-occurring mental and substance abuse disorders

#### Project Model

A logic/impact model should underlie the conceptual development and preparation of each application. In this model, the applicant should:

1. Define the population(s) being targeted by the specific intervention.
2. Specify the nature of the risk factors associated with the target population(s), including environmental factors, and relate these to the project's observed impact. Document any causal relationships that may have been previously identified in the literature.
3. Describe the rationale for the proposed interventions or strategies explaining why these interventions or strategies may impact on the problems facing the target population.
4. Identify the measurable/observable outcomes that can logically be anticipated from these interventions.

For example:

Risk factors—teenage pregnancy; alcohol and other drug use during pregnancy; lack of support network; involvement with the criminal justice system; malnutrition; poverty.

Assumptions—There is the likelihood that a malnourished, alcohol and other drug using teenage mother will give birth prematurely. Also, many children born to mothers who have used drugs during pregnancy are more difficult to manage in the preschool years; this often leads to an increased incidence of abuse.

Strategies—Case management when pregnant, substance-using women are first identified to facilitate access to prenatal care; modeling behaviors for pregnant women and mothers to facilitate bonding following birth; providing residential care for the pregnant woman using alcohol and other drugs, followed by residential care for her and her infant during the child's first year of life.

Anticipated Outcomes—Reduced incidence of premature births among the target population(s); improved behavior during the first five years of life; enhanced self-esteem among mothers who are able to keep and care for their children.

It should be possible to trace the path of a targeted individual or population

through the various interventions to the point where the outcome can be logically predicted and assessed by the identified measures.

#### Project Requirements

The proposed budget should allow for three persons (project director and two other persons to be designated by the grantee) to attend three national meetings each year. The primary program evaluator will be required to attend one of these meetings.

Grantees will be required to submit progress, expenditure, and final reports in accordance with PHS Grants Policy requirements.

#### Evaluation

A detailed evaluation plan linked directly to the project's objectives must be included as part of the grant submission. Linkage of the evaluator and the evaluation process to the grantee organization must be delineated. Process and outcome evaluation must be incorporated in the overall plan.

OSAP is planning a national evaluation for selected demonstration projects funded by this grant program. The outcome measures that will be utilized during the course of the national evaluation will be developed by OSAP in concert with the national contractor and the grantees. Representative grantees will be invited to work closely with the national evaluator and to provide data.

#### Eligibility

Applications may be submitted by public or private non-profit or for-profit organizations such as universities, colleges, hospitals, community-based organizations, units of State or local governments, and private organizations. Women and minorities are especially encouraged to apply.

#### Period of Support

Support must be requested for a period of at least 3 years but may not exceed 5 years. Annual awards will be made subject to continued availability of funds and progress achieved. Competing renewals will be considered, but total funding under this Program Announcement (including under the prior RFA) may not exceed 5 years.

#### Availability of Funds

It is estimated that approximately \$6 million will be available to support approximately 20-25 grants under this announcement in Fiscal Year 1992. However, the exact amount of funding available will depend on appropriated funds, the quality of proposals, and program priorities at the time of award.

#### Application Procedure

Application kits (PHS 5161-1; rev. 3/89) containing guidance for completing OSAP demonstration grant applications are available from: National Clearinghouse for Alcohol and Drug Information (NCADI); P.O. Box 2345, Rockville, Maryland 20852, Telephone: 1-800-729-6686.

All applicants should use Form PHS 5161-1, which contains Standard Form 424. The title of this Announcement, "Model Projects for Pregnant and Postpartum Women and Their Infants (Substance Abuse)", should be typed in item 10 on the face page of the PHS 5161-1.

Applicants should return a complete application consisting of the signed original form PHS 5161-1 and the set of appendices and two (2) permanent, legible copies of these documents to: OSAP Programs, Division of Research Grants, NIH; room 240, 5333 Westbard Avenue, Bethesda, Maryland 20892.\*

**IMPORTANT**—The mailing envelope (including that provided by an express carrier) must be clearly marked "OSAP Demonstration Grants for Pregnant and Postpartum Women."

Applications must be complete and contain all information needed for review. Except where otherwise required by these instructions (e.g., comments from the State's Single Point of Contact), supplementary or corrective material pertinent to an application will not be accepted after the specified receipt date unless specifically solicited by or agreed to in prior discussion with the Executive Secretary of the Initial Review Group (IRG). Because there is no guarantee that such late material will be accepted or that reviewers will consider such late material, it is important that the application be complete at the time of submission.

Applications submitted in response to this announcement are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through Department of Health and Human Services Regulations at 45 CFR part 100. Through this process, States, in consultation with local governments, are provided the opportunity to review and comment on applications for Federal financial assistance. Applicants should contact the State's Single Point of Contact (SPOC) as early as possible to determine the State's applicable review procedure. A current listing of SPOCs will be included in the application kit.

\* If using an overnight carrier or Express Mail, the Zip Code is 20816.



The following States do not participate in the intergovernmental review of programs under Executive Order 12372: Alaska, Idaho, Nebraska, Kansas, Louisiana, Minnesota, and Virginia. Applicants should note that comments received from the State will be considered as a factor in the review of their applications. SPOC comments should be sent to the Acting Director, Office of Program Coordination and Review, Office for Substance Abuse Prevention, Parklawn Building/Rockwall II, room 630, 5600 Fishers Lane, Rockville, Maryland 20857, no later than 60 days after the relevant receipt date. OSAP does not guarantee to accommodate comments received from the SPOC that are received after the 60-day cut-off.

The application must include a copy of a letter sent to the Single State Agency (SSA) briefly describing the grant proposal. Evidence of support for the proposed project from the SSA for Drug and/or Alcohol Abuse and the State Public Health Agency will be used in making award decisions (See Award Criteria Section).

#### Application Characteristics

The narrative section should be written in a manner that is self-explanatory to outside reviewers unfamiliar with prior related activities of the applicant. It must be well-organized and contain the information necessary for reviewers to understand the project. Sections A-E may not exceed a total length of 25 single-spaced pages. Sections F and G may not exceed a total length of 10 pages. Applications exceeding these page limits will not be accepted for review and will be returned to the applicant. The page limit will be rigorously enforced. Suggestions for page lengths for specific sub-sections of the narrative are merely for guidance and may be modified by the applicant. Appendices may be attached for technical or specialized materials but should not be used merely to extend the narrative.

#### Revised Applications

If the application is a revision of one previously submitted and reviewed, please follow the instructions below. Applicants may wish to consult with OSAP program staff before revising and resubmitting.

- Resubmitted applications which are essentially identical to prior ones will not be accepted and will be returned without review. Therefore, make sure the revisions are significant and that they are readily identifiable, as explained below. Also, if revising an application that was submitted in

response to a previous RFA, be sure that the application is complete and responsive to the specific requirements of the present Program Announcement

- In an INTRODUCTION, not to exceed 1 page, that precedes the INDEX, identify the original application by number and indicate when it was submitted. If there has been a change from the original project director, please note that as well. For example: "This is a revision of an application (1 H86 SP12345-01) which was submitted for the — receipt date. The project director for that submission was —"
- Summarize in the Introduction any substantial additions, deletions, and changes that have been made. Include responses to questions or criticisms found in the previous summary statement. The Introduction will not be counted toward the total page limit of the application
- Within the text of the proposal, highlight these changes by appropriate bracketing, indenting, or changing of typography. However, do not indicate changes by underlining or shading. Incorporate in the Background and Significance section any work done since the prior version was submitted

A revised application will be returned if an introduction is not included and/or substantial revisions are not clearly apparent.

Acceptance of a revised application automatically withdraws the prior version.

**Abstract**—This should precede the body of the narrative, be single-spaced, and should not exceed 30 lines. The abstract should clearly present the grant application in summary form, from a "who-what-when-how-where" point of view. It should allow reviewers to see how the multiple parts of the application fit together to form a coherent whole. The abstract is not counted toward the narrative page total.

**Index Page**—Immediately following the abstract page, the applicant is required to provide an index page identifying the page where each section of the outline begins.

**The Following Sections A-H Replace the General Instructions for Completing the Program Narrative of the Application Form PHS 5161-1 (REV. 3/89)**

#### A. Specific Aims

Identify the goals and specific objectives for the proposed project and how these relate to the goals stated in this grant announcement. (Suggested length: ½-1 page)

#### B. Background and Significance

Demonstrate familiarity with the understanding of previous work done in the area of the proposed project. A brief review of the literature and of other related projects or studies, as well as any relevant prior work, observations, or experiences of the applicant should be included in this section. For competing renewals a progress report discussing progress to date and results should be included. (Suggested length: 1-3 pages)

#### C. Target Population

This section should include a rationale, preliminary analysis, and operational definition(s) of the target population(s) in the proposed project; a summary of currently available data on the target population(s) (e.g., incidence and/or prevalence, age, culture, location, demographic and socioeconomic characteristics, minority composition); a discussion of available human services for the target population(s); and a discussion of the gaps and other problems in the availability and acceptability of prevention and/or treatment services for the population(s).

#### D. Approach/Method

Discuss the approach to be used in conducting the proposed demonstration project with attention to detail. The following information must be provided:

- Procedures for gaining access to the target group. Applicants should indicate plans for dealing with the difficult issues of identification, recruitment, involvement, retention, and follow-up with these populations
- Where appropriate, plans for any special attention to be given to the unique needs and concerns of members of social and ethnic minority groups within the target population(s)
- A plan of action that describes the project, discusses how each activity related to the project will be approached, coordinated with existing programs (where appropriate), and implemented. Program components should be related to information from the background section of the proposal (needs, existing services, previous accomplishments)
- A logic/impact model that provides reasoning for the linkages between specific program activities and immediate as well as eventual expected outcomes (intervention rationale)
- Where appropriate, evidence of coordination with related Federal, State, and local programs. There is a



strong need for coordination among health, social service, voluntary and other relevant community-based organizations and service systems. Such coordination allows more efficient use of funds and reduces duplication of services. Demonstration of a proposed comprehensive and coordinated service delivery can be accomplished using a continuum of approaches. Applications from a consortium of organizations would be accepted, though one organization would be required to accept responsibility for project management. Specific working agreements (pending funding) should be included as appendices, where appropriate. Justification should be provided if no such working agreements are included. Evidence of existing or previous joint efforts should be submitted, if available. At a minimum, letters of support from all cooperating organizations should be provided. Such letters should be specific with respect to the type and level of commitment (e.g., minimum number of clients to be provided with specified type of services, personnel and other resources, access to populations) and the intent of the organizations involved. Specific working agreements and letters of support should be attached as appendices. The applicant should also discuss the anticipated impact of the project on the problems of the target population(s) and gaps in the service delivery systems for this population(s).

The following must be addressed:

- Estimate the number and demographic composition of individuals to be served or otherwise addressed for each year
- State the anticipated specific program accomplishments for each year (e.g., program linkages made, materials developed, procedures implemented)
- State specific anticipated outcomes for each year (e.g., number of clients served, reduction in substance use in target population(s), increase in skills)

#### E. Evaluation Plan

The OSAP will support only projects with a well-developed evaluation plan. As part of the application screening and review processes, applications will be examined for the presence of a defined evaluation component. Applications with a clearly inadequate evaluation plan will be judged to be incomplete and returned without further review.

Applicants should have appropriate evaluation expertise on their staff or should make arrangements for obtaining such consultation to assist in achieving

these objectives. The results of such consultation should be apparent in the application. It is estimated that at least 15 percent of the cost of a project is needed for evaluation activities, but that the true cost of evaluation should be determined by the size of the program and the complexity of the evaluation. The applicant should document in the narrative the evaluation costs requested from OSAP in the budget section.

All projects should conduct both process and outcome evaluations. Together, the process and outcome evaluations should allow an assessment of the extent to which the project's objectives were met.

The process evaluation should be sufficient to facilitate replication of the project if the approach proves promising. The process evaluation consists of the collection of quantitative and qualitative data that permit a description of the implementation of the project (e.g., description of size and nature of client population, staff characteristics, amount and types of services provided). The results of the process evaluation should be a useful description of who provided what services to whom, when, how often, and in what setting(s).

Program evaluation plans should also include outcome/impact evaluation plans directed toward assessing whether the program was effective in meeting its goals. The nature of the outcome data and evaluation design will vary as a function of the goals of the project.

Applicants should include both a plan and time line for the process and outcome evaluation, both of which must be operational at the time the program begins. Depending on the complexity of the program and the degree to which the first year of funding is devoted to implementation and stabilization, it may be unrealistic to expect evidence of effectiveness during the first year. However, it would be considered advisable to indicate how the program will collect such data on a trial or pilot basis, as well as to provide baseline information for comparison purposes.

If the proposed project contains linkages with other programs, the evaluation should address the total comprehensive service array and not just the specific services provided by the applicant (if any):

For both outcome and process evaluations, applications should provide an evaluation design, including a description of the proposed instruments (with copies added as appendices if available), a schedule and procedure for the collection of data, and a description of the data analysis plan. (Suggested length: 2-3 pages)

#### F. Project Staffing, Management and Organization

**1. Organizational Structure.** Provide a narrative description of the organizational structure of the proposed demonstration project. This description should clearly indicate the organizational relationships and responsibilities of the Project Director and each project unit or activity. It should also indicate the percentage of time devoted to the project by all staff. Indication should be provided as to which positions require new hiring.

The responsibilities and composition of Boards—of Supervisors, Directors, Trustees, and/or Advisors—should be included, where applicable.

Provide a description of organizational relationships between the applicant and other State/local level health and human services agencies as these relate to the proposed project. If the applicant agency is responsible to or receives program and/or management direction from a State, regional, or other office or agency, this relationship should be clearly described. An organizational chart should be provided which illustrates relationships and lines of responsibility.

**2. Organizational Capability.** Provide evidence that the organization is capable of implementing the proposed project. Documentation of experience in similar or other relevant activities, access to the target population(s), expertise in service delivery and evaluation, experience in developing and effectively using inter-organizational agreements, and other indications of capability should be provided as appropriate. The use of external expertise is encouraged when helpful (e.g., evaluation consultants) and should also be presented in this section.

**3. Staffing Pattern.** Biographical sketches should be included in a readily identifiable appendix. These sketches should not be counted toward the page limit. Experience and/or training pertinent to the proposed project should be highlighted.

Job descriptions must be submitted, as appendices, for each key professional position identified in the proposed budget. Only one job description needs to be submitted for identical positions. Job descriptions should include job title, description of duties and responsibilities, qualifications for position, supervisory relationships, skills and knowledge required, prior experience required, educational background required, and job site (if appropriate). Documentation should be provided to ensure that staff loaned to



the project from other units or agencies will be available for the amount of time required.

The narrative must include a brief section describing how staff will be recruited and selected, and whether any particular mix of background, skills, and/or personal qualities is proposed. The relationship of staff characteristics to the objectives of the demonstration project should be discussed.

Consideration must be given to the use of multidisciplinary staff and staff representing the sexual, ethnic, and cultural characteristics of the population to be served.

**4. Project Task Plan.** The management plan must include a description of tasks to be performed, their sequence, performance schedule, and their relationship to each other. The accomplishment of these tasks should be related to the project goals and objectives, as well as to the management of the project. The level of effort required for each task also should be shown.

A PERT or Gantt chart and/or flow diagrams may be helpful to display these tasks.

#### G. Resources

Describe the facilities, equipment, services, and other resources available to carry out the project. Justify requested resources. List other sources of Federal or non-Federal funding impacting on this or related programs.

Also, describe planned activities to secure continued financial support for the program beyond the OSAP-supported demonstration grant, if the project is successful.

**Other Support:** The following information must be provided in a specially labeled appendix, "Other Support."

"Other Support" refers to all current or pending support related to this application. Applicant organizations are reminded of the necessity to provide full and reliable information regarding "other support," i.e., all Federal and non-Federal active or pending support. Applicants should be cognizant that serious consequences could result if failure to provide complete and accurate information is construed as misleading to PHS and could therefore lead to delay in the processing of the application. In signing the face page of the application, the authorized representative of the applicant organization certifies that the applicant information is accurate and complete.

For your organization and key organizations that are collaborating with you in this proposed project, list all currently active support and any

applications/proposals pending review or funding that relate to the project. If none, state "none."

For all active and pending support listed, also provide the following information:

- (1) Source of support (including identifying number and title).
- (2) Dates of entire project period.
- (3) Annual direct costs supported/requested.
- (4) Brief description of the project.
- (5) Whether the project overlaps, duplicates, or is being supplemented by the present application; delineate and justify the nature and extent of any programmatic and/or budgetary overlaps.

#### H. Confidentiality and Other Ethical Concerns

Applicants and awardees are expected to make appropriate plans and take necessary steps to deal with potential ethical issues concerning participants in proposed projects.

This section of the application should discuss pertinent ethical issues such as confidentiality, privacy, and voluntariness of participation, and describe plans to address these issues. Section H will not be counted toward the total page limit of the application.

A major area of concern is confidentiality. Awardees must agree to maintain the confidentiality of alcohol and drug abuse client data in accordance with the Code of Federal Regulations, 42 CFR part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

In those projects where individually identifiable, private information will be collected to achieve project objectives and/or carry out the proposed evaluation, the application must clearly identify and describe the population(s) for which such information will be collected, including their age(s), sex, ethnicity, and health status. In addition, this section of the application must include a description of (1) the sources and kinds of data that are to be obtained and maintained in identifiable form, and (2) the procedures that will be implemented to ensure the privacy and confidentiality of these records (e.g., using code numbers instead of participants' names on data records, limiting access to records, maintaining security for records). Applicants should consider minimizing the time that identifiers are kept, consistent with the project's objectives.

Applicants must also discuss how they are planning to deal with other potential concerns about ethical issues. This section of the application should (1) identify any potential physical

(including medical), psychological, legal, social (e.g., labeling), or other risks that participation in the project might present; (2) discuss what steps will be implemented to eliminate or minimize these risks; (3) discuss what procedures will be followed in obtaining assent or consent from participants and, if relevant, parental consent; and (4) specify what information will be provided regarding the nature, purpose, requirements, and potential risks of their participation.

Awardees may be required to obtain written informed consent from participants and/or their parents or legal guardians if participation in the project poses potential physical (including medical), psychological, legal, social (e.g., labeling), or other risks. This section of the application should indicate whether it is planned to obtain informed consent from participants and/or their parents or legal guardians and should describe the procedures to be followed in obtaining such consent, including the circumstances under which agreement to participate will be sought and the information that will be provided regarding the voluntary nature of the participation, the right of participants to withdraw from the project without prejudice, and procedures for assuring confidentiality and minimizing potential risks. Copies of sample consent forms should be included in an appendix.

#### Review Process

Applications submitted in response to this Program Announcement will be reviewed for technical merit in accordance with established PHS/ADAMHA review procedures for grants. The Division of Research Grants, NIH, serves as a central point for the receipt of applications. Applications will be screened for completeness and compliance with instructions for submission. An application will be considered incomplete and returned if it is illegible, if it fails to follow the instructions (e.g., exceeds the page limits, or omits required sections), or if the material presented is insufficient to permit an adequate review. Returned applications will not be accepted for this review cycle, but (if applicable) may be corrected and submitted for the next receipt/review cycle.

Applications considered complete will enter a multi-stage review process. In the first stage, the evaluation component will be assessed. Applications judged to be lacking in the measures or method to assess the proposed project will be considered noncompetitive and removed from further review consideration.



OSAP will notify and advise the project director and the organization's business official of this action. Applications judged to be competitive will be reviewed for technical merit by an Initial Review Group (IRG) composed primarily of non-Federal experts. OSAP reserves the right to conduct the multi-stage review at one time or in two discrete steps. Notification of the IRG recommendation on technical merit will be sent to the applicant. In addition, all applications receiving complete IRG review may receive a second-level review by the Advisory Committee on Substance Abuse Prevention, whose review may be based on policy considerations as well as technical merit.

#### Review Criteria

Criteria for technical merit review of applications will include:

- Relevance of project objectives to the OSAP program goals, as stated in this announcement
- Adequacy of information documenting the needs and availability of the target population(s); appropriateness and soundness of procedures for client identification and recruitment; and adequacy of procedures to be implemented to ensure confidentiality of client data
- Evidence of familiarity with the relevant literature and state of the art in alcohol and other drug prevention, treatment, and rehabilitation
- Adequacy and appropriateness of the prevention/intervention approach as it relates to: meeting specific goals and objectives; addressing the multiple needs of the target population(s), including attention to co-morbidity issues; filling program gaps; and increasing the availability of services and opportunities through delivery of new services and/or coordination of existing services
- Potential for widespread replicability
- Clarity, adequacy, appropriateness, and feasibility of the evaluation plan \*
- Evidence of coordination with relevant State and/or local alcohol and other drug abuse prevention programs, treatment or rehabilitation programs, health care facilities, community or voluntary groups, and/or other relevant programs and systems; and where appropriate documentation of specific commitments and support from these organizations
- Evidence that the proposed project is ethnically, racially, and culturally

\* Reviewers will be directed to give extra weight to this criterion as outlined in Section E, Evaluation Plan.

relevant (for example, use of minority professional staff or staff that have received, or will receive, cross-cultural training)

- Adequacy, appropriateness, and feasibility of the project management plan; reasonableness of the proposed budget; and evidence of the organization's capability and the qualifications and experience of the project director, consultants, and other key staff to implement the project successfully

#### Award Criteria

Applications will be considered for funding on the basis of overall technical merit of the project as determined by the review process. Other criteria will include:

- Geographical and/or urban/rural balance
- Balance among types of interventions, approaches, and target populations (including projects which focus on problems of co-morbidity)
- Availability of funds
- Focus on low income and/or minority populations
- Evidence of support for the proposed project from the Single State Authority for Drug and/or Alcohol Abuse, and the State Public Health Agency

#### Terms and Conditions of Support

Grant funds may be used for expenses clearly related and necessary to carry out the described project, including both direct costs which can be specifically identified with the project and allowable indirect costs of the organization. In order to recover allowable indirect costs, it may be necessary to negotiate and establish an indirect cost rate (unless such a rate has already been established for the applicant organization). For information and assistance regarding the timing and submission of an indirect cost rate proposal, you should contact the appropriate HHS Division of Cost Allocation office referenced in the list of "Offices Negotiating Indirect Cost Rates," included in this program's application kit.

Funds cannot be used to supplant current funding for existing activities.

Allowable items of expenditure for which grant support may be requested include:

- Salaries, wages, and fringe benefits of professional and other supporting staff engaged in the project activities;
- Travel directly related to carrying out activities under the approved project;
- Supplies, communications, and rental of space directly related to approved project activities;

• Contracts for performance of activities under the approved project; and

• Other such items necessary to support project activities.

Grants must be administered in accordance with the PHS Grants Policy Statement (Rev. October 1, 1990).

Federal regulations at Title 45 CFR parts 74 and 92, generic requirements concerning the administration of grants, are applicable to these awards.

#### OSAP Application Receipt and Review Schedule

Receipt date	IRG review	Earliest start date
May 20, 1991.....	September/October 1991.	March 1992.
and thereafter with the regular receipt dates of:		
September 20.....	January/February.	July.
January 20.....	May/June.....	December.
May 20.....	September/October.	March.

#### Consequences of Late Submission

Applications received after the above receipt dates are subject to assignment to the next review cycle or may be returned to the applicant without review.

#### Contacts for Additional Information

Questions concerning program issues or grants management issues may be directed to the offices listed below:

Division of Demonstrations and Evaluation, Office for Substance Abuse Prevention, Parklawn Building/Rockwall II, room 9B03, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4564.

Maternal and Child Health Bureau, Health Resources and Services Administration, Parklawn Building, room 9-31, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-5720.

Grants Management Unit, Office for Substance Abuse Prevention, Parklawn Building/Rockwall II, 6th Floor, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3958.

The reporting requirements contained in this announcement are covered under the Paperwork Reduction Act of 1980, Public Law 96-511, OMB Approval Number 0937-0189.

The statutory authorities for this program are sections 509F and 509G(a) of the Public Health Service Act, as



added by section 2054 of Public Law 100-690.

The Catalog of Federal Domestic Assistance number for this program is 93.169.

Joseph R. Leone,  
Associate Administrator for Management,  
Alcohol, Drug Abuse, and Mental Health  
Administration.

[FR Doc. 91-4857 Filed 2-28-91; 8:45 am]

BILLING CODE 4160-20-M

## Centers of Disease Control

### Grants for State and Community-Based Childhood Lead Poisoning Prevention Programs

[ANNOUNCEMENT 113]

#### Introduction

The Centers for Disease Control (CDC) announces the availability of grant funds in Fiscal Year 1991 for the initiation or expansion of State and community-based childhood lead poisoning prevention programs that (1) screen infants and children for elevated blood lead levels, (2) assure referral for treatment of, and environmental intervention for, infants and children with such blood lead levels, and (3) provide education about childhood lead poisoning.

#### Authority

This program is authorized under sections 301 (42 U.S.C. 241) and 317A (42 U.S.C. 247b-1) of the Public Health Service Act, as amended. Program regulations are set forth in title 42, Code of Federal Regulations, part 51b.

#### Eligible Applicants

Eligible applicants are State health departments or other State health agencies or departments deemed most appropriate by the State to coordinate the State's childhood lead poisoning prevention program, and agencies of units of local governments that serve jurisdictional populations greater than 500,000. This eligibility includes health departments or other official organizational authorities (agency or instrumentality) of the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States. Also eligible are federally recognized Indian tribal governments.

If a State agency applying for grant funds is other than the official State health department, written concurrence by the State health department must be provided.

Note: Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the

program and strengthen the overall application.

#### Availability of Funds

It is anticipated that \$5,590,000 will be available in Fiscal Year 1991 to fund approximately 13 childhood lead poisoning prevention programs. Approximately \$2,840,000 will be available to fund 7 noncompeting continuation awards that will average \$400,000 each. Approximately \$2,750,000 will be available to fund about 6 new programs. It is expected that the average new award will be \$400,000, the range being \$200,000 to \$600,000. The new awards are expected to begin on or about May 24, 1991. Awards generally are made for 12-month budget periods within project periods not to exceed 5 years. Funding estimates may vary and are subject to change, depending upon the availability of funds. Continuation awards will be for the recommended project period indicated in the original award and are based on satisfactory progress and the availability of funds.

These grants are intended to develop, expand, or improve prevention programs in communities with demonstrated high-risk populations. Grant awards cannot supplant existing funding for childhood lead poisoning prevention programs or activities. Grant funds should increase the level of expenditures from State, local, and other funding sources for childhood lead poisoning prevention. Awards will be made with the expectation that program activities will continue when grant funds are terminated at the end of the project period.

At the request of the applicant, Federal personnel may be assigned to a project in lieu of a portion of the financial assistance.

Note: Grant funds may not be expended for medical care and treatment or for environmental remediation of lead sources. However, the applicant must provide an acceptable plan to ensure that these program activities are appropriately carried out.

#### Purpose

The purpose of this grant program is to provide financial assistance and support to State and community-based government agencies to develop, improve, and expand the capacity of State and community-based programs to adequately address the problem. This grant program addresses the national year 2000 objective on the reduction of the prevalence of elevated blood lead levels among children. Grant-supported programs are expected to provide new opportunities to prevent lead poisoning. They also will serve as catalysts for the development of non-grant supported

programs and activities in other States and communities.

These programs are designed to: (1) Screen large numbers of infants and young children and identify those with lead poisoning, (2) Identify their possible sources of lead exposure, (3) Monitor medical and environmental management of lead poisoned children, (4) Provide information on childhood lead poisoning, its prevention, and management to the public, health professionals, and policy and decision-makers, and (5) Encourage community action programs directed to the goal of eliminating childhood lead poisoning.

#### Program Requirements

Recipients of awards are expected to meet the following requirements:

1. Establish or expand screening services in communities with large numbers of children at high risk for lead poisoning.
2. Intensify medical management efforts to ensure that children with lead poisoning receive appropriate and timely follow-up services.
3. Establish, expand, or improve environmental investigations so that sources of lead are rapidly identified and abated.
4. Develop an efficient information/management system compatible with CDC data guidelines to monitor and evaluate program progress.
5. Improve the actions of other agencies and organizations to facilitate the rapid abatement of lead sources in high-risk communities.
6. Enhance knowledge and skills of program staff through training and other methods.
7. Provide information on childhood lead poisoning to the public, policy-makers, the academic community, and others based upon program findings.

Grant awards address the need to prevent childhood lead poisoning through the development and implementation of a comprehensive and coordinated screening, medical, and environmental management approach by State and community-based government agencies. Education and outreach activities are an important aspect of a management system approach to the problem. Successful programs depend on activities that create community awareness of the problem, especially among community and business leaders, the medical community, parents, educators, and property owners. Grant-supported programs will serve as models to assist other State and community prevention programs in planning, implementing, and evaluating their prevention efforts.



Program goals and objectives should reflect national, State, and local priorities, and established guidelines (e.g., the CDC statement, Preventing Lead Poisoning in Young Children).

The following are essential requirements for Childhood Lead Poisoning Prevention Projects:

1. A full-time director/coordinator who has the authority and responsibility to carry out the requirements of the program.

2. Ability to provide qualified staff, other resources, and knowledge to implement the provisions of the program.

3. Established capacity to collect and analyze data.

4. Demonstrated experience in conducting and evaluating public health programs.

5. Ability to translate program findings to State and local public health officials, policy and decision-makers, and to others seeking to strengthen program efforts.

6. Information that describes why communities were selected for screening activities, including information on housing conditions, income, other socioeconomic factors, and previous surveys or screening activities for childhood lead poisoning prevention.

7. Effective, well-defined working relationship within and outside the public health agency at national, States and community levels (e.g., Department of Housing and Urban Development, environmental agencies, maternal and child health programs, State and local housing rehabilitation offices, schools of public health and medical schools, and environmental interest groups) to appropriately address the needs and requirements of programs, (e.g., training to ensure the safety of abatement workers) in the implementation of proposed activities. This includes the establishment of relationships with other State and local agencies with expertise in childhood lead poisoning prevention programming.

8. A plan to ensure continuation of the childhood lead poisoning prevention program beyond expiration of grant support.

9. For awards to State agencies, there must be a demonstrated commitment to provide technical, analytical, and program assistance to local agencies interested in developing or strengthening childhood lead poisoning prevention programs.

The major factors to be considered in the evaluation of responsive applications are:

#### 1. Evidence of the Childhood Lead Poisoning Problem (30%)

The applicant's ability to identify populations and communities at high risk, as defined by data from previous screening efforts, environmental data, and/or demographic data.

#### 2. Understanding the Problem (10%)

The applicant's understanding of the requirements, objectives, and complexities of and interactions required for a successful program.

#### 3. Program Personnel (15%)

The extent to which the proposal has described (a) the qualifications and commitment of the applicant, (b) detailed allocations of time and effort of staff devoted to the project, (c) information on how the applicant will develop, implement and administer the program, and (d) the qualifications of the support staff.

#### 4. Technical Approach (20%)

The overall balance of the program measured in terms of intensive screening, medical management, lead hazard identification and abatement, and education and outreach activities. The adequacy of the program design includes the extent to which the evaluation plan can be used to effectively measure progress towards the stated objectives.

#### 5. Collaboration (15%)

The applicant should demonstrate the ability to collaborate with political subdivisions of States in developing childhood lead poisoning prevention programs and collaboration with other program-related entities. Letters of support are encouraged.

#### 6. Plans to become Self-Sustaining (10%)

An explanation of how program services will be continued after termination of Federal grant funds, which includes identifying other sources of support that will be utilized during the project period. By the end of the second budget year, grantees must have concrete plans to ensure institutionalization of the program after termination of grant support.

#### 7. Budget Justification and Adequacy of Facilities (not scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of grant funds. The adequacy of existing and proposed facilities to support program activities also will be evaluated.

#### Executive Order 12372 Review

The intergovernmental review requirements of Executive Order 12372, as implemented by DHHS regulations in 45 CFR 100, the applicable to this program. Executive Order 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs is included in the application kit. The due date for State process recommendations is 60 days after the application deadline date for new and competing continuation awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date.

#### Catalog of Federal Domestic Assistance Number

(The Catalog of Federal Domestic Assistance number is 93.197.)

#### Applications Submission and Deadline

The original and two copies of the application must be submitted on PHSs Form 5161-1 and should carefully adhere to the instruction sheet and information provided. Applications should be submitted on or before March 22, 1991 to Henry S. Cassell, III, Grants Management Officer, Centers for Disease Control, Grants Management Branch, Procurement and Grants Office, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305.

#### 1. Deadlines

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

#### 2. Late Applications

Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications and will be returned to the applicant.



**Where to Obtain Additional Information**

A complete program description, information on application procedures and application package may be obtained from the Grants Management Office by writing to: Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E-14, Atlanta, Georgia, 30305, or by calling: (404) 842-6630 or FTS 236-6630.

Technical assistance pertaining to the Childhood Lead Poisoning Program may be obtained from: Jerry M. Hershovitz, Deputy Chief, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, Mail Stop F-28, Atlanta, Georgia 30333, Telephone: (404) 488-4880 or FTS 236-4880.

Please refer to announcement number 113 when requesting information and submitting any application.

Dated: February 25, 1991.

Robert L. Foster,

Acting Director, Office of Program Support,  
Centers for Disease Control.

[FR Doc. 91-4849 Filed 2-28-91; 8:45 am]

BILLING CODE 4160-18-M

**Food and Drug Administration**

[Docket No. 91C-0033]

**Hilton Davis Co.; Filing of Color Additive Petition**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Hilton Davis Co. has filed a petition proposing that the color additive regulations for FD&C Blue No. 1 be amended to provide for the safe use of manganese dioxide to manufacture the color additive.

**FOR FURTHER INFORMATION CONTACT:** Wes Long, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that Hilton Davis, Co., 2235 Landon Farm Rd., Cincinnati, OH 45237, has filed a petition (CAP 0C0227), proposing that part 74 (21 CFR part 74) of the color additive regulations be amended to provide for the safe use of

manganese dioxide in the manufacture of FD&C Blue No. 1.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 19, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-4793 Filed 2-28-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91G-0030]

**Uncle Ben's, Inc.; Filing of Petition for Affirmation of GRAS Status**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Uncle Ben's, Inc., has filed a petition (GRASP 1G0370) proposing to affirm that alginic acid for use as a pH control agent is generally recognized as safe (GRAS) as a direct human food ingredient.

**DATES:** Comments by April 30, 1990.

**ADDRESSES:** Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5487.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409 (21 U.S.C. 321(s), 348)) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Uncle Ben's, Inc., 5721 Harvey Wilson Dr., P.O. Box 1752, Houston, TX 77252-1752, has filed a petition (GRASP 1G0370), proposing that alginic acid for use as a pH control agent be affirmed as GRAS for use as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 (21 CFR 170.30 and 170.35) is filed

by the agency. There is no pre-filing review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before April 30, 1991, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 19, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-4792 Filed 2-28-91; 8:45 am]

BILLING CODE 4160-01-M

**Advisory Committee Meeting; Cancellation**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is canceling the meeting of the Circulatory System Devices Advisory Committee scheduled for March 11, 1991. The meeting was announced by notice in the **Federal Register** of February 19, 1991 (56 FR 6672 at 6673).

**FOR FURTHER INFORMATION CONTACT:** Wolf Sapirstein, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1018.



Dated: February 26, 1991.

Gary Dykstra,

Acting Associate Commissioner for  
Regulatory Affairs.

[FR Doc. 91-4945 Filed 2-28-91; 8:45 am]

BILLING CODE 4160-01-M

## Health Resources and Services Administration

### Final Project Requirements, Funding Preference, Funding Priorities and Funding Set-Aside for Cooperative Agreements for Acquired Immunodeficiency Syndrome (AIDS) Regional Education and Training Centers Program

The Health Resources and Services Administration (HRSA), announces the final project requirements, funding preference, funding priorities, and funding set-aside for Cooperative Agreements for Acquired Immunodeficiency Syndrome (AIDS) Regional Education and Training Centers (ETCs) program as authorized by section 788A of the Public Health Service Act (the Act).

The ETCs will provide multidisciplinary training for primary health care personnel in the care of people with Acquired Immunodeficiency Syndrome (AIDS) and other conditions related to infection with the Human Immunodeficiency Virus (HIV).

#### Eligibility

Awards are made to accredited health professional schools and academic health science centers (see below):

1. To train the faculty of schools and graduate departments of medicine, nursing, osteopathic medicine, dentistry, public health, psychology, and allied health to teach health profession students to provide for the health care needs of individuals with HIV/AIDS;
2. With respect to improving clinical skills in the diagnosis, treatment and prevention of such syndrome, to educate and train the health professionals and clinical staff of schools of medicine, osteopathic medicine, and dentistry; and
3. To develop and disseminate curricula relating to the care and treatment of individuals with HIV/AIDS.

**Accredited Health Professional Schools** means schools of medicine, dentistry, osteopathic medicine, pharmacy, optometry, podiatric medicine, veterinary medicine, public health, and chiropractic, as defined in section 701(4) of the Act, schools of allied health as defined in section 701(10) of the Act, and schools of

nursing as defined in section 853 of the Act, which are located in States as defined in section 701(11) of the Act and which are accredited as provided in section 701(5) of the Act. The term also includes a "graduate program in health administration" and a "graduate program in clinical psychology" as defined in section 701(4) of the Act and a program for the training of physician assistants as defined in section 701(8)(A).

**Academic Health Science Center** means an organization within a post-secondary educational system, which brings together major divisions or programs of health professions instruction, research in the health sciences, and health services.

Proposed project requirements, a funding preference, funding priorities, and a funding set-aside were published in the Federal Register of December 10, 1990 (55 FR 50778) for public comment. No comments were received during the 30-day comment period. The project requirements, funding preference, funding priorities and funding set-aside will be retained as proposed.

#### Final Project Requirements

The final project requirements are designed to direct Federal resources where the greatest needs exist. Each project must define a geographic region and identify the types of providers to be targeted for training within that region. Thus, the focus of FY 1991 will be on clinical education of primary care providers in high HIV/AIDS prevalence areas. Consistent with this emphasis is the requirement that a minimum of two-thirds of the Federal funds provided must be expended to provide education to primary care providers (i.e., physicians, nurses, dentists, physician assistants, nurse practitioners, and dental hygienists).

A needs assessment must be made to guide program implementation. This assessment must be based on current epidemiological data, as well as training and educational needs within the defined region. Established centers will have up to one year to conduct the needs assessment and make required adjustments. New centers will also have up to one year for start-up activities and to conduct an educational and training needs assessment. The assessment must include training needs associated with rural and other low incidence areas within the defined region.

Each ETC must provide or perform the following:

- Clinical training of primary care physicians, nurses, dentists, physician assistants, nurse practitioners, and

dental hygienists;

- An updated needs-assessment of the education and training needs of the primary care providers within the proposed service area which is linked to the allocation of Federal funds;
- Training in risk assessment, prevention, early intervention, and treatment;
- Development of primary/tertiary linkages and networking;
- Outreach to minorities, including involvement of minority providers, minority professional organizations, and minority health care delivery systems;
- Linkage to PHS funded AIDS Service Demonstration projects (sec. 301);
- Linkage to PBS funded migrant (sec. 329) and community health (sec. 330) centers, health care for the homeless programs (sec. 340), State and local health agencies;
- Linkage with substance abuse programs;
- Collaboration with health professions organizations in the proposed region;
- Networking with other community agencies to concentrate on filling the gaps in training;
- Dissemination of state-of-the-art information and educational materials in concert with other PHS agencies, using mechanisms such as hotlines;
- Program assessment and data collection on program and trainees which can be used for regional and national evaluative purposes; and
- Plan for future non-Federal funding of project.

#### Collaboration

The ETCs must operate in collaboration with health professions schools, community hospitals, health departments, PHS funded Area Health Education Centers, AIDS Service Demonstration projects, Health Care for the Homeless programs, community and migrant health centers, and with substance abuse programs, community-based organizations, and other organizations involved in the provision of care to people with HIV/AIDS related conditions.

ETC projects also are encouraged to collaborate with the national network of 47 AIDS Clinical Trial Units (ACTUs) and the 18 Community Programs for Clinical Research on AIDS funded by the National Institute of Allergy and Infectious Diseases of the National Institutes of Health, and with other community based clinical trials sponsored by foundations such as the American Foundation for AIDS



Research. Listings of the federally-funded programs were provided to each applicant with the ETC application kit.

#### Conversion of Funding Mechanism from Grant to Cooperative Agreement

Effective in FY 1991 the funding mechanism for this program (competing and continuation projects) changed from grants to cooperative agreements to allow for a greater degree of Federal involvement in the conduct of the funded programs. This will permit greater Federal participation in many program areas. Substantial involvement will occur in the following areas:

- The design or direction of activities to develop a clinically-oriented training delivery model, with special emphasis for minority providers and providers who serve minority populations;
- The approval of key ETC project staff with particular emphasis on recruitment of minority faculty;
- The review of major contracts and agreements with subcontractors;
- The dissemination of state-of-the-art diagnostic and therapeutic clinical guidelines and algorithms, with a particular emphasis on early intervention strategies, which will include antiretroviral therapy, prophylaxis for opportunistic infections, and immunizations for viral and bacterial pathogens.

#### Review Criteria

The review criteria stated below, which were established in FY 1989 after public comment, will remain unchanged in FY 1991.

Applications will be reviewed and rated according to the applicant's ability to meet the following:

1. The potential effectiveness of the project in carrying out the purposes of the program;
2. The degree to which the project plan adequately provides for meeting the project requirements;
3. The capability of the applicant to conduct the proposed activities in a cost efficient manner;
4. The soundness of the fiscal plan for assuring effective utilization of funds; and
5. The potential of the project to continue on a self-sustaining basis after the period of support.

#### Statutory Funding Preferences

In making awards in FY 1991, as required by Section 788A, the Secretary shall give preference to projects which will:

1. Train, or result in the training of, health professionals who will provide treatment for minority individuals with acquired immunodeficiency syndrome

and other individuals who are at a high risk of contracting such syndrome; and

2. Train, or result in the training of, minority health professionals and minority allied health professionals to provide treatment for individuals with HIV/AIDS.

#### Final Funding Preference for Fiscal Year 1991

The Health Resources and Services Administration will give a funding preference to applications that spend the majority of Federal funds in a designated HIV/AIDS high incidence area(s). For purposes of this announcement in FY 1991, high incidence area means the 20 metropolitan statistical area(s) (MSA) with the highest cumulative number of cases or the 20 MSAs with the highest rate of AIDS as indicated in the July 1990 Centers for Disease Control HIV/AIDS Surveillance Report. A listing of the eligible MSAs was provided to applicants with the program materials.

Where applicable, there must be remaining funds for lower incidence areas. Based on the needs assessment, and if applicable, the remaining effort and funds must be spent in lower incidence contiguous or regional localities, including rural or other areas experiencing significant increases in the incidence of HIV/AIDS. Projects must assume training responsibility for outlying areas where practitioners are providing care for HIV-infected persons.

#### Final Funding Priorities for Fiscal Year 1991

In determining the order of funding of approved applications, the HRSA will give funding priorities to the following:

1. Applications proposing substantial training in: Area Health Education Centers, (section 781 of the Act); Health Professional Shortage Areas, (section 332 of the Act); Migrant Health Centers, (section 329 of the Act); Community Health Centers, (section 330 of the Act); or Health Care for the Homeless Programs, (section 340 of the Act).

The term "Health Manpower Shortage Area" which appeared in the notice published in the Federal Register on December 10, 1990 (55 FR 50778) has been changed to "Health Professional Shortage Area", section 401 Public Law 100-507, signed into law November 16, 1990.

2. Applications documenting the participation of underrepresented minorities as faculty or key staff in the ETC program.

#### Definitions

The following definitions apply to training sites/facilities included in the first final funding priority listed above:

#### Facilities

*Area Health Education Center* means an entity as defined in section 781 of the Public Health Service Act and in regulations at 42 CFR § 57.3802. This reference was inadvertently omitted in the proposed Federal Register notice (FR 50778), published on December 10, 1990.

*Community Health Center* means an entity as defined in section 330(a) of the Public Health Service Act and in regulations at 42 CFR § 57.102(c).

*Health Care for the Homeless Program*, as used here, means a community-based program of comprehensive primary health care and substance abuse services brought to the homeless population under section 340 of the PHS Act. At a minimum, this program of care and services must be fully integrated and must assure that care, coordination and case management are rigorously employed. A full description of the program may be found in Federal Register, (55 FR 31233) (August 1, 1990).

*Health Professional Shortage Area* means an area designated under section 332 of the PHS Act.

*Migrant Health Center* means an entity as defined in section 329(a) of the Public Health Service Act and in regulations at 42 CFR § 56.102(g)(1).

#### Other Definitions

*Rural Area* means a Non-Metropolitan Statistical area or an area located outside a Metropolitan Statistical Area as defined by standards followed by the Office of Management and Budget.

*Rural regional education and training center* is an AIDS ETC project which meets the essential characteristics of an ETC, is adapted to serve the health professions education needs of rural areas and rural primary care providers and has components which may be replicated in other rural areas.

#### Final Funding Set-Aside for Fiscal Year 1991

Up to 10 percent of appropriated funds for this program will be set aside to fund rural regional education and training center projects that focus on training in early diagnosis, counseling, prevention, and treatment for primary care practitioners in rural areas.

For further information regarding this program contact: AIDS Regional Education and Training Centers Program, Bureau of Health Professions, Health Resources and Services



Administration, Parklawn Building, room 4C-03, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6364.

This program is listed at 93.145 in the *Catalog of Federal Domestic Assistance* and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: February 25, 1991.

Robert G. Harmon,  
Administrator.

[FR Doc. 91-4854 Filed 2-28-91; 8:45 am]

BILLING CODE 4180-15-M

### Elements Under Consideration for Expanding the Research Capacity of the National Practitioner Data Bank

**SUMMARY:** This notice sets forth a description of data elements which could be added to § 60.7 of the title IV Final Regulations, at 45 CFR part 60 (implementing the Health Care Quality Improvement Act of 1986, Title IV of Public Law 99-660), and the medical malpractice payment report form in order to foster research into medical malpractice and liability. The expanded research capacity of the data base could be used by government and private researchers to enhance the understanding of medical malpractice issues. Before going forward with the rulemaking process, the Health Resources and Services Administration (HRSA) is soliciting comments on suggested data elements it believes would assist researchers while continuing to minimize the burden of entities required to report the information.

**DATES:** Comments should be submitted by April 30, 1991.

**ADDRESSES:** Send comments to Fitzhugh Mullan, M.D., Director, Bureau of Health Professions, Health Resources and Services Administration, room 8-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

**FOR FURTHER INFORMATION CONTACT:** Daniel D. Cowell, M.D., Director, Division of Quality Assurance, Bureau of Health Professions, Health Resources and Services Administration, room 8-67, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: 301 443-2300.

**SUPPLEMENTAL INFORMATION:** It has been suggested that the Data Bank represents a unique opportunity to study a number of the issues involved with medical malpractice and liability. However, in order to increase the usefulness of the Data Bank as a

research resource, the data currently collected from medical malpractice payors would require expansion.

As stated in the preamble to the title IV regulations, the Department planned to request additional information regarding medical malpractice actions to support important medical liability and malpractice research, and that the public would have the opportunity to comment on these plans.

The Secretary is considering the expansion of the data collected under § 60.7(b) which concerns the reporting of information regarding the practitioner, facility and settlement or judgment. Such an expansion might require the reporting of additional information concerning the facility or site in which the act or omission supporting the malpractice action or claim occurred, and on the individual (claimant) who filed the medical malpractice action or claim. The expansion could also include selected personal and professional characteristics of the practitioner at the time of the act or omission which is the basis of the claim.

Examples of the types of data elements under consideration regarding the facility or site might include:

- \* Name and Zip code of the facility or site where the act(s) or omission(s) occurred;
- \* Description of the facility or site (e.g., public, private voluntary or private proprietary); and
- \* Specific location within the facility at which the act(s) or omission(s) occurred (e.g., outpatient clinic, operating room, recovery room).

Examples of the types of data elements under consideration regarding the claimant might include:

- \* Zip code of principal residence;
- \* Date of birth;
- \* Gender;
- \* Occupational status;
- \* Educational level;
- \* Total annual family income from all sources;
- \* Major sources of payment of the claimant's health care costs at the time of the injury (e.g., self, commercial insurance, workmen's compensation, Medicare); and
- \* Number, description, and outcome of previous claims, if known.

Examples of the types of data elements under consideration regarding personal and professional information which might be requested regarding the practitioner include:

- \* Gender;
- \* Specialty designation;
- \* Career status at the time of the act(s) or omission(s) which was the basis of the claim (e.g., intern, resident, independent practitioner);

\* Type of practice at the time of the act(s) or omission(s) which was the basis of the claim (e.g., self-employed solo practitioner, hospital based-salaried, emergency care center-salaried);

\* Predominant professional activity, including hours per week, at the time of the act(s) or omission(s) which was the basis of the claim (e.g., administration, direct patient care, research); and

\* Health care entities other than hospitals with which he or she was affiliated at the time of the act(s) or omission(s) which was the basis of the claim (e.g., HMOs, group medical practices).

Examples of the types of data elements under consideration regarding the judgment or settlement resulting in payment which might be requested from insurers or other entities:

- \* Where an action or claim has been filed with an adjudicative body, identification of the adjudicative body, case number and the date of filing;
- \* Amount of claim, paid amount, date of payment, and whether payment was for a judgment or a settlement;
- \* Classification of act(s) or omission(s) in accordance with a reporting code adopted or developed by the Secretary;
- \* Classification of the severity of the injury or illness in accordance with a reporting code adopted or developed by the Secretary;
- \* Procedural status of the claim when the payment was made (e.g., before trial, during trial, after jury verdict); and
- \* Reason for the settlement.

These data elements could be added to the current "Medical Malpractice Payment Report" form and reported with each report submitted to the Data Bank. We have estimated that it would take approximately 30 additional minutes to complete the form with the addition of these data elements. The estimate for completion of the form as currently structured is 30 minutes. Thus, it will take approximately 1 hour to complete a malpractice payment report. We estimate that 45,000 reports will be filed annually.

The affected respondents are the same estimated 1,800 entities which are currently using the "Medical Malpractice Payment Report" form. These are insurance companies, self-insured individuals, self-insured organizations, and other entities which make payments or which serve as authorized representatives of such payors.

As provided for in § 60.11(a)(7) of the title IV Final Regulations, the data proposed to be added to the Data Bank



by the expansion of the reporting requirements under § 60.7, in addition to data already collected under § 60.7, would be made available to persons or entities who request information which does not permit the identification of any particular patient, health care entity, or physician, dentist or other health care practitioner. The data would also be included in reports requested by eligible entities.

The Bureau of Health Professions is seeking comments on:

1. Additional research needs and potential uses of information which are not addressed by the proposed research elements;
2. Whether the suggested elements are the most useful elements in meeting the current and anticipated research needs;
3. The problems in availability, obtaining, and reporting the additional elements suggested;
4. Suggestions regarding available codes which would simplify and standardize reporting; and
5. Levels of aggregation needed to maintain patient and practitioner anonymity and the security of Data Bank information.

Dated: February 25, 1991.

Robert G. Harmon,  
Administrator.

[FR Doc. 91-4853 Filed 2-28-91; 8:45 am]  
BILLING CODE 4160-15-M

## Public Health Service

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, February 22, 1991.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. Honolulu Heart Program—0925-0122—This research project is a re-examination of the 5,000 surviving members of the original Honolulu Heart Program cohort. The results of this study will be used to further describe the risk factors, occurrence rates, and consequences of cardiovascular disease in American men of Japanese ancestry. Respondents: Individuals or households; Number of Respondents: 2,500; Number of Responses per Respondent: 1;

Average Burden per Response: 1.41 hours; Estimated Annual Burden: 3,525 hours.

2. Interstate Shipment of Etiologic Agents, 42 CFR 72, NPRM—0920-0256—CDC proposes to revise and update the current regulation, 42 CFR part 72, Interstate Shipment of Etiologic Agents (OMB No. 0920-0199). As a result, some increase in reporting burden is anticipated. The revision is necessary to clarify and expand the requirements for proper packaging and handling of etiologic agents, thereby minimizing the risk of exposure to these agents by people who handle the packages. Respondents: Individuals or households, businesses or other for-profit; Number of Respondents: 1; Estimated Annual Burden: 1 hour.

3. National Hospital Ambulatory Medical Care Survey—NEW—Data collected from hospital outpatient departments and emergency departments concerning patient visits are aggregated to national statistics. The data are used by the public and private sectors for public health planning, medical education, health manpower assessment, epidemiologic studies, and other medical care utilization research. Respondents: State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations; Number of Respondents: 448; Number of Responses per Respondent: 202; Average Burden per Response: .08 hours; Estimated Annual Burden: 7,114 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: February 22, 1991.

James M. Friedman,  
Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 91-4783 Filed 2-28-91; 8:45 am]  
BILLING CODE 4160-17-M

## Social Security Administration

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of

Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on February 15, 1991.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package.)

1. State Agency Report of Obligations For SSA Disability Programs—0960-0421—The information collected on the form SSA-4513 is used by the Social Security Administration to budget and account for expenditures which are incurred by the State Disability Determination Services' (DDS) while implementing certain provisions of the disability portion of the Social Security Act. The affected public is comprised of DDS' which contract to the Social Security Administration.

Number of respondents: 54

Frequency of response: 4

Average burden per response: 1 hour

Estimated annual burden: 216 hours.

OMB desk officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: February 22, 1991.

Ron Compston,  
Social Security Administration, Reports Clearance Officer.

[FR Doc. 91-4796 Filed 2-28-91; 8:45 am]  
BILLING CODE 4190-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-15]

### Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: March 1, 1991.



**ADDRESSES:** For further information, contact James Forsberg, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565. (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: February 22, 1991.

Paul Roitman Bardack,  
Deputy Assistant Secretary for Economic Development.

[FR Doc. 91-4698 Filed 2-28-91; 8:45 am]

BILLING CODE 4210-29-M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

#### Nomination for National Indian Gaming Commission

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice.

**SUMMARY:** The Indian Gaming Regulatory Act (25 U.S.C. 2701, *et seq.*) provides for appointment by the Secretary of the Interior of two associate members of the National Indian Gaming Commission after public notice and an opportunity for comment. Notice is hereby given of the proposed appointment of Jana McKeag as an associate member of the Commission.

**DATES:** Comments must be received by: April 1, 1991.

**ADDRESSES:** Comments should be addressed to: Morris Simms, Director of Personnel, Department of the Interior, 1849 C Street NW., Washington, DC 20240, (202) 208-6761.

**SUPPLEMENTARY INFORMATION:** Section 5(a) of the Indian Gaming Regulatory Act (25 U.S.C. 2704(a)) establishes a three-member National Indian Gaming Commission within the Department of the Interior. The Act provides that the Chairman of the Commission is to be appointed by the President with the advice and consent of the Senate. The two associate members of the

Commission are to be appointed by the Secretary of the Interior (25 U.S.C. 2704(b)(1)). The Act provides that the Secretary shall publish notice of nominations for the associate member positions in the *Federal Register* and provide an opportunity for public comment.

Notice is hereby given of the proposed appointment of the following individual to be an associate member of the Commission for a term of one (1) year:

**Jana McKeag.** Ms. McKeag, a member of the Cherokee tribe, currently serves as Director of Native American Programs, Office of Intergovernmental Affairs, U.S. Department of Agriculture. From August 1988 to December 1990, Ms. McKeag was Staff Assistant to the Deputy Assistant Secretary—Office of Trust and Economic Development in the Bureau of Indian Affairs. Prior to this appointment, she served as a Program Analyst and as Executive Assistant to the Deputy Assistant Secretary in the Bureau of Indian Affairs. Ms. McKeag also served the Department of the Interior as a Program Analyst in the Office of Policy Analysis from August 1985 to August 1988, and as a Budget Analyst Intern with the Office of Budget from July 1983 to January 1984. She served as a Program Analyst for the Equal Employment Opportunity Commission from January 1984 to May 1985, and as an Equal Employment Opportunity Specialist for the U.S. Commission on Civil Rights from August 1976 to September 1979. Ms. McKeag's experience in American Indian affairs also includes serving as Executive Assistant to the Director for the Congressional Commission for American Indian Policy Review from September 1975 to August 1976, and as Education Director for the National Congress of American Indians from July 1974 to September 1975. Ms. McKeag is an officer and a member of the board of directors for the Y.M.C.A. of Metropolitan Washington, and a member of the board of directors for the Coalition for the Homeless. She holds a bachelor of arts degree from Gettysburg College, Gettysburg, Pennsylvania, and a master of public administration degree from Harvard University Kennedy School of Government.

Persons wishing to comment on this proposed appointment may submit written comments to the address identified above. Comments must be received within 30 days of the date of the publication of this notice.

Dated: February 22, 1991.

Manuel Lujan, Jr.,

Secretary of the Interior.

[FR Doc. 91-4894 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-RJ-M

### Bureau of Indian Affairs

#### Flathead Indian Irrigation Project, MT

**AGENCY:** Bureau of Indian Affairs, Department of the Interior.

**ACTION:** Final notice of operation and maintenance rates.

**SUMMARY:** The purpose of this notice is to establish the assessment rates for operating and maintaining the Flathead Indian Irrigation Project for 1991. The assessment rates are based on a prepared estimate of the cost of normal operations and maintenance. Normal operations and maintenance is defined as the average per acre cost of all activities involved in delivering irrigation water, including maintaining pumps and other facilities.

**EFFECTIVE DATE:** This public notice will become effective on publication in the *Federal Register* and remain in effect until changed by further notice.

**FOR FURTHER INFORMATION CONTACT:** Portland Area Director, Portland Area Office, Bureau of Indian Affairs, 911 N.E. 11th Avenue, Portland, Oregon 97232-4169.

**Authority:** The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (36 Stat. 583, 25 U.S.C. 385).

This notice is issued by authority delegated to the Assistant Secretary for Indian Affairs by the Secretary of the Interior in 209 DM 8 and redelegated by the Assistant Secretary for Indian Affairs to the Area Director in 10 BIAM 3 and pursuant to § 171.1(e) of part 171, subchapter H, chapter 1, title 25 of the Code of Federal Regulations, which provides for the Area Director to fix and announce the rates for operation and maintenance assessments and related information on the Flathead Indian Irrigation Project for calendar year 1991 and subsequent years.

**SUPPLEMENTARY INFORMATION:** On October 18, 1990 the Bureau published notice of proposed operation and maintenance rates for 1991, 55 FR 42275. The notice provided opportunity to comment before a final rate is published. The Bureau of Indian Affairs received several comments which were considered in arriving at a final rate.

The Flathead Joint Board of Control (JBC) submitted several comments.



First, the JBC stated the BIA had not transmitted a proposal to the JBC for the 1991 rate prior to publishing the rate in the *Federal Register*. However, the Superintendent personally presented to the JBC the proposed 1991 budget and assessment in March 1990. Following discussion on the budget, the Superintendent revised and resubmitted a budget and assessment of \$18.40 by letter dated June 28, 1990. An impasse was reached, and the JBC refused to acknowledge and levy any assessment except for what already existed, that being \$14.36 per acre.

Next, the JBC questions if normal operations and maintenance include costs associated with other benefits such as Fishery, recreation, aesthetics, and flood control. The BIA notes any costs associated with providing for senior water rights would be a cost of normal operation and maintenance, and any costs associated with minimizing other impacts caused by irrigation facilities would be normal operation and maintenance.

The JBC asks what is the impact of maintaining instream flows on pumping charges in the O&M assessment? Management states maintaining of instream flows may increase pumping cost some years but, instream flows is not a discretionary item as senior water rights must be served.

The JBC continues, would a rehabilitation and betterment program reduce O&M? Is the proposed rate "normal" in view of the need for rehabilitation and betterment. The BIA replies that a rehabilitation and betterment program in future years will increase the annual repayment and should decrease annual O&M costs. However, the 1991 Budget and assessment are based on the actual costs required to operate and maintain the existing Project facilities at the level allowed by the \$16.40 per acre assessment.

In addition the JBC urges that the O&M rate be frozen at \$14.36 until these questions can be answered. The BIA postulates the amount proposed by JBC is not sufficient to adequately deliver the irrigation water to the waterusers in this Project. The final assessment of \$16.40 attempts to reflect a request for less administration and overhead but yet maintain a level of service that just delivers water. Maintenance will be minimized. Water accounting will be reduced, and planning for the future delayed.

In another comment JBC is opposed to the principle which forces them to pay for fish rescue without receiving any information concerning the numbers of fish retrieved in rescue operations.

Management contends all activities entailed in delivering irrigation water include operation, maintenance, pumping and peripheral activities related to minimizing irrigation impacts to fisheries that interact with project facilities. The additional cost to gather this information would increase already escalated assessments with no relative benefit to the water user as a whole. Therefore, costs were not included in the final rate to provide for the collection of this data.

The JBC believes that a joint effort by all parties with an interest in the Flathead Irrigation Project should be undertaken to secure interim funding from the Department of the Interior. The BIA is not able to respond to this request at this time. Any funding request to the Department of the Interior requires justification and 1 to 2 years lead time.

Another commenter noted that an increase of another \$4.00 per acre would put our water at \$20.76 per acre which is a prohibitive cost for what little water that is allotted to the irrigators of this Project. The BIA in making this final rule has acknowledged that the economy faced by the waterusers is not good. The \$2.00 per acre reduction in assessment deals with the concern that the higher cost could severely impact the wateruser.

This commenter also stated in 1983, we were paying approximately \$10 per acre for the same service we are receiving now. Management replies that the districts were furnishing employees to the project in addition to paying the O&M assessment in 1983. The salaries have also increased by 27% since then and the management team was employed from the Bureau of Reclamation at the irrigators request for increased technical assistance.

Another commenter suggested that an increase in O&M should not be used to increase administration. The BIA in setting the final rate of \$16.40 per acre provides for reduced administrative cost.

Another comment stated one improvement that has been neglected for years is the cleaning of existing reservoirs of silt to increase their holding capacity. This comment is not addressed by the BIA in this final rule. Money for such studies and final action would have to come from future budgets.

The commenter further stated the amount of water allocated to the irrigators across the valley is not a fair proportion. The final rule does not consider a study for reapportionment of duty of water within the project. Water

is currently delivered as equitably as possible under existing regulations.

Another commenter suggested the proposed O&M charge of \$18.40 are too high when you figure what this land will produce. The BIA acknowledges that the wateruser economies are not good. The final assessment of \$16.40 per acre reflects a reduction of \$2.00 per acre.

Another comment recommended that the project should reduce the engineering staff. The BIA's final assessment reflects a decrease in administrative staff, which includes eliminating one engineering position.

One commenter stated the last two years, users got only one (1) irrigation before all the water was taken the second week in July for the instream flows of 8 cfs. The final rate reflects that all available water will be equitably delivered to users. The 8 cfs instream flow on East Finley Creek is established as part of the interim water management planning consistent with a 1985 court agreement.

In light of the comments submitted the Area Director established the Flathead Irrigation Project rate of \$16.40 per acre for 1991 and subsequent years.

The revised budget reflects a 4.1% cost of living increases in personnel cost in lieu of the 3.5% originally forecasted for Irrigation Division personnel.

The Irrigation Division will not fill three (3) vacancies originally forecasted to be filled—an Equipment Operator, a Carpenter, and a Pumping Plant Operator. A reduction in existing staff will be required—a Supply Clerk, a Custodian, and an Engineer. These reductions are in line with comments made by the waterusers.

All duties will be absorbed by existing staff with the exception of office cleaning for which we have added \$10,000 to other services as an additional cost. Pumping costs have been reduced by \$25,000 due to early run off predictions. The Bureau of Reclamation overhead cost has been reduced from 35% to 15%.

All other costs remain the same as originally anticipated in the \$18.40 per acre budget. The \$16.40 budget will work all Career Seasonal Field staff for a period of nine (9) months and purchase the supplies needed to do some fall maintenance, as requested in the waterusers comments.

*Irrigation Operation and Maintenance Charges:* In compliance with the above, the operation and maintenance charges for the lands under the Flathead Irrigation Project, Montana, for the season of 1991 and subsequent years until further notice, are hereby fixed as follows:



Lands included in an Irrigation District, and lands held in trust for Indian and non-District lands will be assessed operation and maintenance charges at \$16.40 per acre for the season of 1991 and subsequent years.

**Payment:** The operation and maintenance charges on the trust and non-District lands become due on April 1 each year and on the lands within a Irrigation District are billed biannually. To all assessments on lands in non-Indian ownership, remaining unpaid 60 days after the due date, there shall be added a penalty and interest for each month, or fraction thereof, from the due date until paid. No water shall be delivered to any farm unit until all O&M charges have been paid for that farm unit.

**Interest and Penalty Fees:** Interest and penalty fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, title 4, part 102, Federal Claims Collection standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures.

Ronald Brown,

Acting Portland Area Director.

[FR Doc. 91-4812 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-02-M

#### Bureau of Land Management

[NV-930-91-4212-16; N-30782, N-30784, N-30790, N-30791, N-30792, N-30793, N-30795, N-30796]

#### Termination of Desert Land Classifications; Nevada

Dated: February 12, 1991.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This action terminates desert land classifications N-30782, N-30784, N-30790, N-30791, N-30792, N-30793, N-30795, and N-30796.

**EFFECTIVE DATE:** Termination of the classifications is effective with the publication of this document.

**FOR FURTHER INFORMATION CONTACT:** Vienna Wolder, BLM, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520, 702-785-6526.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 7 of the Taylor Grazing Act (48 Stat. 1272), desert land classifications N-30782, N-30784, N-30790, N-30791, N-30892, N-30793, N-30795, and N-30796 are hereby terminated in their entirety. The following described lands are affected by this action:

#### Mt. Diablo Meridian, Nevada

T. 18 N., R. 45 E.,

Secs. 21, 23, 33, and 35.

The area described aggregates 2,560 acres in Nye County.

The classifications were accomplished pursuant to the Desert Land Act (43 U.S.C. 231, as amended) and the Carey Act (43 U.S.C. 641-647, as amended) in response to eight desert land applications. All the applications were approved and entries allowed. Entry to the lands provided segregation from all other forms of appropriation under the public land laws, including location under the mining laws. None of the entries proved up for patent and the entries have been cancelled. The classifications are no longer considered appropriate and are hereby terminated.

The cancellations were noted to the official records on February 7, 1991, and on that date the lands became open to the operation of the public land laws and location under the mining laws.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 91-4840 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-HC-M

[CO-920-91-4120-11; COC52402]

#### Colorado: Invitation for Coal Exploration License Application; Western Fuels-Utah, Inc.

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to title 43, Code of Federal Regulations, subpart 3410, members of the public are hereby invited to participate with Western Fuels-Utah, Inc., in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Rio Blanco County, Colorado:

Township 3 North, Range 101 West, 6th P.M.

Sec. 25, all;

Sec. 26, all;

Sec. 34N½, and N½SE¼;

Sec. 35, N½, and N½S½;

Sec. 36, N½, and N½S½.

The area described contains approximately 2640.00 acres, more or less.

The application for coal exploration license is available for public inspection during normal business hours under serial number COC52402 at the BLM Colorado State Office, Public Room, 2850 Youngfield Street, Lakewood, Colorado 80215 and at the BLM Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and

any other party or parties who elect to participate. Written Notice of Intent to Participate should be addressed to the following and shall be made within 30 days after the publication of this Notice of Invitation in the Federal Register:

Richard D. Tate, Chief, Mining Law and Solid Minerals Adjudication Section, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215, and

Don L. Deardorff, Manager, Engineering and Exploration, Western Fuels-Utah, Inc., 405 Urban Street, suite 305, Lakewood, Colorado 80228

Richard D. Tate,

Chief, Mining Law and Solid Minerals, Adjudication Section.

[FR Doc. 91-4817 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-JB-M

[CA-060-1-4410-12]

#### Amendment of the Recreation Element of the California Desert Conservation Area Plan

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Extension of comment period and notice of additional public workshop.

**SUMMARY:** On February 8, 1991, in accordance with 43 CFR 1610.5-5, the Bureau of Land Management published in the Federal Register a notice of intent and notice of public workshops for the purpose of identifying issues related to a proposed amendment to the recreation element of the California Desert Conservation Area Plan.

The public has expressed considerable interest in this proposed amendment and requested additional opportunities for public input. The purpose of this notice, therefore, is to extend the deadline for submission of written comments, to announce an additional public workshop meeting and to provide additional information on the availability of documents which may be helpful to the public in identifying issues.

**DATES:** Written comments will be accepted from the public until March 29, 1991. An additional public workshop will be held as follows: March 21, 1991, 7-9:30 p.m., Pasadena Convention Center, 300 E. Green Street, Pasadena, California.

**ADDRESSES:** Written comments should be sent to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507.

**FOR FURTHER INFORMATION CONTACT:** Molly S. Brady, Chief, Planning and



Environmental Assistance, California Desert District, 1695 Spruce Street, Riverside, California 92507, (714) 276-6428.

**SUPPLEMENTARY INFORMATION:**

Background information was provided in the February 8, 1991 *Federal Register* notice. Copies of relevant documents identified in that notice as well as additional documents and references listed below are available for review in the California Desert District Office, 1695 Spruce Street, Riverside, California. These documents will also be available for review at the public workshop session.

The California Desert Conservation Area Plan, Bureau of Land Management, 1980.

Draft Environmental Impact Statement and Proposed Plan, California Desert Conservation Area, BLM, September 1980.

*Volume C, appendix V: Recreation, Final Environmental Impact Statement and Proposed Plan, BLM, September 1980.*

Draft California Desert Conservation Area Plan Alternatives and Environmental Impact Statement, BLM, February 1980.

1982 Plan Amendments to the California Desert Plan and the Eastern San Diego County MFP, Record of Decision, BLM, May 1983.

Proposed 1982 Plan Amendments to the California Desert Plan and the Eastern San Diego County MFP, Final Environmental Impact Statement, BLM, March 1983.

Proposed 1982 Plan Amendments to the California Desert Plan and the Eastern San Diego County MFP, Draft Environmental Impact Statement, BLM, 1982.

1989 Amendment Review of California Desert Plan, Correction and Amendment Notice, *Federal Register*, Vol. 55, No. 12, January 18, 1990.

Review of California Desert Plan, Correction and Amendment Notice, *Federal Register*, Vol. 55, No. 83, April 30, 1990.

Dated: February 20, 1991.

Richard E. Crowe,

*Acting District Manager.*

[FR Doc. 91-4453 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-40-M

[NM-010-4333010/G1-109]

**Final El Malpais National Conservation Area General Management Plan**

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of availability of the Final El Malpais National Conservation

Area (NCA) General Management Plan (GMP), Rio Puerco Resource Area.

**SUMMARY:** In accordance with section 501 of Public Law 100-225, the Bureau of Land Management's Rio Puerco Resource Area has completed the preparation of the Final El Malpais NCA GMP. As required by the legislation, copies of this document are being transmitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. The GMP describes the appropriate uses and development of the NCA, in order to protect for the benefit and enjoyment of future generations that area in western New Mexico containing La Ventana Natural Arch and the other unique and nationally important geological, archeological, ecological, cultural, scenic, scientific, and wilderness resources of the public lands surrounding the Grants Lava Flows.

**DATES:** Implementation of the Final GMP will begin on April 1, 1991.

**ADDRESSES:** Requests for copies of the Final GMP should be sent to: Albert Abree, Area Manager, Rio Puerco Resource Area, Bureau of Land Management, 435 Montano NE, Albuquerque, NM, 87107.

**FOR FURTHER INFORMATION CONTACT:** Steve Fischer, (505) 287-7911.

**SUPPLEMENTARY INFORMATION:** An Environmental Impact Statement (EIS) will be prepared later this year for the Chain of Craters Wilderness Study Area (WSA), which is contained in the NCA. The wilderness recommendation for the Chain of Craters WSA will be transmitted to Congress following completion of the Final EIS.

Robert T. Dale,

*Albuquerque District Manager.*

[FR Doc. 91-4814 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-84-M

**Salmon District Advisory Council; Meeting**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Meeting.

**SUMMARY:** The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Advisory Council.

**DATES:** The meeting will be held Wednesday, March 27, 1991 at 10 a.m.

**ADDRESSES:** The meeting will be held at the BLM Salmon District Office, Highway 93 South, Salmon, Idaho.

**SUPPLEMENTARY INFORMATION:** This meeting is held in accordance with Public Laws 92-463 and 94-579. The purpose for the meeting is to discuss Special Recreation Use Permit procedures, status of the District Resource Objective Management Plans (ROMP), overview of the BLM Hazardous Material Management Program, and current Salmon District issues.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11 a.m. and 11:30 a.m. or file written statements for the Council's consideration. Anyone wishing to make oral statement must notify the District Manager at the Salmon District Office by March 22, 1991.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to Roy S. Jackson, District Manager, Salmon District BLM, Box 430, Salmon, Idaho 83467.

Dated: February 12, 1991.

Roy S. Jackson,

*District Manager.*

[FR Doc. 91-4816 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-GG-M

[WY-920-41-5700; WYW113553]

**Oil and Gas Lease; Proposed Reinstatement of Termination**

Pursuant to the provisions of Public Law 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW113553 for lands in Big Horn County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10.00 per acre, or fraction thereof, per year and 16% percent, respectively.

The lessee has paid the required \$500 administrative fee and \$125 to reimburse the Department for the cost of this *Federal Register* notice.

The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW113553 effective November



1, 1990, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: February 21, 1991.

Pamela J. Lewis,

*Supervisory Land Law Examiner.*

[FR Doc. 91-4815 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-22-M

[CA-010-01-4212-13, CA-25913FD, S-1595C]

### Realty Action; Nevada County, CA

**REALTY ACTION:** Amendment of notice of realty action: exchange of public lands and termination of Recreation and Public Purposes (R&PP) Act Classification in Nevada County, California.

**AGENCY:** Bureau of Land Management, Interior.

**SUMMARY:** The document amends the Notice of Realty Action (CA-25916FD, S-1595C) published in 58 FR 6034, February 14, 1991. It is amended to include: The public lands will be transferred subject to a reservation to the United States for a right-of-way for ditches and canals constructed under the authority of the Act of August 30, 1890 (43 U.S.C. 945).

R&PP lease S-1595 will terminate upon issuance of patent. Authorized rights-of-way and any other authorized land uses will be identified as prior existing rights.

All necessary clearances shall be completed prior to conveyance of title by the United States.

Dated: February 20, 1991.

D.K. Swickard,

*Area Manager.*

[FR Doc. 91-4820 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-40-M

[ES-962-91-5420-10; MIES 42141]

### Disclaimer of Interest; Michigan

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice of intent of the United States to disclaim certain property interests in Kalkaska County, Michigan.

**DATES:** March 1, 1991.

**FOR FURTHER INFORMATION CONTACT:**

A. Nate Felton, Chief, Branch of Adjudication, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, (703) 461-1433.

**SUPPLEMENTARY INFORMATION:** United States Department of the Interior,

Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304. The United States of America, pursuant to section 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1745, does hereby give notice of its intention to disclaim any interest to Ms. Alzada Stuck, any lands in the following described property:

Michigan Meridian, Kalkaska County, Michigan

Township 26 North, Range 6 West, Section 9, NE¼NW¼ (excepting the Village of Sigma).

It was determined that these lands were patented to the State of Michigan pursuant to the Swamp and Overflowed Lands Act of September 28, 1850 (9 Stat. 352). A Supplemental List of Swamp Lands was approved October 27, 1853. The purpose of this notice is to afford an opportunity to all persons having an adverse interest in the land to file their objects in this office within 90 days of the publication date of this notice. If no protest is received, the disclaimer will issue shortly after the expiration of the 90-day period. A protestant must serve the applicant above with a copy of the objections and furnish evidence of such service to this office.

Robert J. Bainbridge,

*Acting State Director.*

[FR Doc. 91-4819 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-84-M

[CA-060-00-4410-08]

### Adoption of the Santa Rosa Mountains National Scenic Area Management Philosophy Statement and Interim Program Guidance

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Adoption of Santa Rosa Mountains National Scenic Area Management Philosophy Statement.

**SUMMARY:** A Management Philosophy Statement was prepared by the citizen's Executive Steering Committee to provide overall direction and guidance for the Santa Rosa Mountains National Scenic Area (SRMNSA). This management philosophy has local broadbased public support and was presented by the SRMNSA Executive Steering Committee to the California Desert District Advisory Council and adopted by unanimous vote at a meeting on November 18, 1990. The text of the Management Philosophy Statement is set forth below:

### Santa Rosa Mountains National Scenic Area Management Philosophy Statement

The Santa Rosa Mountains form part of the last frontier in the California Desert's rapidly urbanizing Coachella Valley environment. Burgeoning population pressures exerted by major metropolitan areas in Southern California place extreme stress and a premium value on the last vestiges of open space.

On March 31, 1990, Secretary of the Interior Manuel Lujan designated the Santa Rosa Mountains as a National Scenic Area. The establishment of the Scenic Area provides national recognition and a unified planning and management approach for the rugged, spectacular desert mountains that form the scenic backdrop to the Coachella Valley and constitute one of the major attractions to this historic and tourism/resort area.

The people of the Coachella Valley have always looked to the rugged and noble desert mountains that rise dramatically from the valley floor for their sense of spiritual strength and physical well-being. In recognition of this community tradition and the inherent open space and scenic values of the Santa Rosa Mountains, the BLM has formed a partnership with the people of the Coachella Valley. This partnership is hereby dedicated to the careful planning, wise use, and conservation of that area in the California Desert designated as the Santa Rosa Mountains National Scenic Area. It was created for the purpose of protecting the unique and nationally important scenic, scientific, ecological, archaeological, cultural, geological, recreational and wilderness resources for the benefit and enjoyment of future generations.

The Santa Rosa Mountains National Scenic Area is the heritage of all citizens and its stewardship and lasting preservation is our mutual responsibility. The legacy and natural wonders of the Santa Rosa Mountains that we hold in trust will endure only as long as we dedicate ourselves to that end. As stated by the citizens' Ad Hoc Committee whose efforts helped to achieve the National Scenic Area designation: "The time needed to accomplish this task is fleeting."

**FOR FURTHER INFORMATION CONTACT:** Gerald E. Hillier, District Manager, Bureau of Land Management, California Desert District, 1695 Spruce Street, Riverside, California 92507, (714) 276-6386.



**SUPPLEMENTARY INFORMATION:** A Coordinated Resource Management Planning effort is ongoing. The planning team is represented by citizens of diverse interests who meet on a regularly scheduled basis to develop a community base plan. Target date for the completion of a draft management plan in December 30, 1991. During the planning period, interim activities such as developing information centers, signing, and acquiring land will proceed. Insofar as these activities are consistent with the goals of the National Scenic Area designation, they will continue and may be completed. The designation of the Scenic Area is intended to protect resources, therefore, no disposal of public lands within the Scenic Area will be considered at the current time.

Dated: February 15, 1991.

Gerald E. Hillier,  
District Manager.

[FR Doc. 91-4818 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-40-M

[OR-942-00-4730-12: GP1-121]

#### Filing of Plats of Survey: Oregon/ Washington

**AGENCY:** Bureau of Land Management.  
**ACTION:** Notice.

**SUMMARY:** The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

#### Willamette Meridian

##### Oregon

T. 17 S., R. 1 W., accepted 2/11/91  
T. 40 S., R. 13 W., accepted 2/11/91  
T. 12 S., R. 30 E., accepted 1/25/91

##### Washington

T. 6 N., R. 13 E., accepted 2/8/91  
T. 7 N., R. 13 E., accepted 2/8/91  
T. 6 N., R. 15 E., accepted 2/11/91  
T. 7 N., R. 15 E., accepted 2/11/91

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE., 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person

or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 1300 NE., 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: February 19, 1991.

Robert E. Mollohan,  
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-4821 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-33-M

#### Fish and Wildlife Service

#### Intent To Prepare an Environmental Impact Statement on the Master Plan for the Walnut Creek National Wildlife Refuge in the Walnut Creek Watershed Near Prairie City in Jasper County, Iowa

**AGENCY:** Fish and Wildlife Service, Department of the Interior.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that the Fish and Wildlife Service (FWS) intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) for the Master Plan for the Walnut Creek National Wildlife Refuge in the Walnut Creek watershed near Prairie City in Jasper County, Iowa. A series of public meetings will be held during the development of the Master Plan and the preparation of the EIS. Notices of the dates, times and locations of these public meetings will be advertised in local publications prior to the event. This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited.

**DATES:** Written comments should be received by April 1, 1991. A public meeting will be held in Reynolds, Iowa, on Tuesday, March 12, 1991.

**ADDRESSES:** Comments should be addressed to:

Regional Director, Region 3, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

The public meeting on March 14, 1991, will be held at 7:30 p.m. at the Southeast Polk Community High School at 8325 NE. University, Reynolds, Iowa 50237. The school is located east of Des Moines on Route 163, approximately 10 miles west of Prairie City and 6 miles east of Des Moines.

**FOR FURTHER INFORMATION CONTACT:** Richard Birger, Refuge Manager, Walnut Creek National Wildlife Refuge, P.O. Box 399, Prairie City, Iowa 50228, Telephone: (515) 994-2415.

**SUPPLEMENTARY INFORMATION:** Dave Shaffer is the primary author of this document.

The Fish and Wildlife Service, Department of the Interior, proposes to develop a Master Plan for the Walnut Creek National Wildlife Refuge. The primary purpose of the Master Plan is to achieve the following refuge objectives:

1. To restore native tall grass prairie, wetland, woodland habitats for breeding and migratory waterfowl and resident waterfowl;
2. To serve as a major environmental education center providing opportunities for study;
3. To provide outdoor recreation benefits to the public; and
4. To provide assistance to local landowners to improve their lands for wildlife habitat.

In 1990, an Environmental Assessment (EA) was prepared by the FWS on the establishment of the Refuge to comply with the provisions of the NEPA. NEPA requires Federal agencies such as the FWS to evaluate the impacts associated with major Federal actions which potentially affect the quality of the social, economic, and natural environment. In August of 1990, following preparation and review of the EA, the FWS determined that the establishment of the refuge would not result in adverse impacts to the quality of the human environment.

As established, the Walnut Creek National Wildlife Refuge will occupy approximately 8,600 acres approximately 20 miles east of Des Moines in Jasper County, Iowa. The refuge will provide opportunities for the public to visit and appreciate restored native prairie, wetlands, streamside woodlands, and the resident and migratory wildlife. The refuge is a part of the Des Moines Recreational River and Greenbelt. The refuge affords an



opportunity to complement other recreational areas such as Red Rocks State Wildlife Management Area and Elk Rock State Park.

In December 1990, the FWS initiated the preparation of a Master Plan for the newly established Walnut Creek National Wildlife Refuge. The Master Plan will be prepared to establish which uses, facilities and features will be incorporated into the refuge, in addition to the location, size, and composition of these elements. The Master Plan will be developed based upon coordination with the public, including Federal, state, and local agencies, as well as citizen interest groups.

The environmental review of the Master Plan for the Walnut Creek National Wildlife Refuge will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4371 et seq.), NEPA Regulations (40 CFR 1500-1508), other appropriate Federal regulations, and FWS procedures for compliance with those regulations.

The FWS estimates that the Draft Environmental Impact Statement (DEIS) will be made available to the public by December 1991.

Dated: February 21, 1991.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 91-4846 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-55-M

#### Availability of a Report to Congress, Entitled "Wetlands Losses in the United States, 1780's to 1980's"

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (FWS) announces the availability of a report to Congress, entitled "Wetlands Losses in the United States, 1780's to 1980's". The report was prepared in response to requirements of section 401(a) of the Emergency Wetlands Resources Act (Act) of 1986 (16 U.S.C. 3931(a)), as amended. The report includes an assessment of the estimated total number of acres of wetland habitat as of the 1780's for each state, an assessment of the estimated total number of acres of wetlands for each state as of the 1980's, and the percentage of loss of wetlands for each state between the 1780's and the 1980's.

**ADDRESSES:** Persons wishing a copy of the report should contact the U.S. Fish and Wildlife Service, Publications Unit,

MS-130 Arlington Square, 1849 C Street NW., Washington DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Don Woodard, National Wetlands Inventory, 9720 Executive Center Drive, Monroe Building, suite 101, St. Petersburg, Florida 33702. (Telephone FTS 826-3624; Commercial 813/893-3624.)

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 401(a) of the Act was amended by section 18 of the North American Wetlands Conservation Act of 1989 (Pub. L. 101-233). The amendment requires assessments of the estimated total acres of wetland habitat as of the 1780's in the areas that now comprise each state; and of the estimated total number of acres of wetlands in each state as of the 1980's, and the percentage of loss of wetlands in each state between the 1780's and the 1980's.

**Authority:** The authority for this action is section 401(a) of the Emergency Wetlands Resources Act of 1986, as amended.

Dated: January 8, 1991.

Bruce Blanchard,

Acting Director.

[FR Doc. 91-4871 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-55-M

#### Bureau of Mines

##### Meeting of The Advisory Committee on Mining and Mineral Resources Research

The Advisory Committee on Mining and Mineral Resources Research will meet from 8 a.m. to 5 p.m. (or completion of business) on Tuesday, April 2, 1991, in the Cocoa Suite No. 1, Hershey Lodge and Convention Center, West Chocolate Avenue and University Drive, Hershey, Pennsylvania. The primary purpose of the meeting is the review of the Respirable Dust Generic Mineral Technology Center. The proposed agenda is:

1. Welcome and introductions.
2. Approval of the minutes of the meeting of December 11, 1990.
3. Congressional outlook for 1991.
4. Committee initiatives.
5. Review and approval of the Report on the Review of the Pyrometallurgy Generic Mineral Technology Center.
6. Review and discussion of the Interim Report on the Commission Generic Mineral Technology Center.
7. Review of the Respirable Dust Generic Mineral Technology Center and a site visit of the Hershey Medical Center.
8. Consideration of draft report on the review of the Respirable Dust Generic Mineral Technology Center.

#### 9. New business.

This meeting is open to the public with seating for visitors on a first-come, first-served basis. Written statements concerning agenda subjects and the operation of the Mineral Institutes program are welcome.

Visitors having written statements to put before the Committee or who wish to address the Committee should inform Dr. Ronald A. Munson, Chief, Office of Mineral Institutes, Bureau of Mines, Mail Stop 1020, 2401 E Street NW., Washington, DC 20241, phone (202) 634-1328, FAX (202) 634-2208, BITNET MININSTS@GWUVM, no later than noon, Friday, March 22, 1991.

Dated: February 25, 1991.

T. S. Ary,

Director.

[FR Doc. 91-4893 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-53-M

#### INTERSTATE COMMERCE COMMISSION

##### Intent to Engage in Compensated Intercompany Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercompany hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Cal-State Lumber Sales, Inc., 10145 Via de la Amistad, San Ysidro, California 92073.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) San Diego Wood Products Transportation, 7435 Via de la Amistad, suite K, San Ysidro, California 92073. Incorporated in California.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-4873 Filed 2-28-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 349X)]

##### CSX Transportation, Inc.—Abandonment Exemption—In Gaston County, NC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

**SUMMARY:** The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by CSX Transportation, Inc., of 15.94 miles of rail line in Gaston County, NC,



subject to standard labor protective conditions.

**DATES:** Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective March 16, 1991. Formal expressions of intent to file an offer<sup>1</sup> of financial assistance under 49 CFR 1152.27(c)(2) must be filed by March 11, 1991 and petitions for reconsideration must be filed by March 26, 1991. Requests for a public use condition must be filed by March 11, 1991.

**ADDRESSES:** Send pleadings referring to Docket No. AB-55 (Sub-No. 349X) to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
- (2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721.)

**SUPPLEMENTARY INFORMATION:**

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423 Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: February 19, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,  
Secretary.

[FR Doc. 91-4877 Filed 2-28-91; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

**BACKGROUND:** The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

**LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW:** As necessary, the Department of Labor will publish a list of the Agency

recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

**COMMENTS AND QUESTIONS:** Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Officer of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

#### New

Pension and Welfare Benefits Administration

Prohibited Transaction Class Exemption 80-51

Recordkeeping

Businesses or other for-profit

1 hour; 1 respondent; 1 hour per response; 0 forms.

This class exemption exempts from the prohibited transaction provisions of ERISA certain transactions between a bank collective investment fund and persons who are parties in interest with respect to a plan as long as the plan's participation in the collective investment fund does not exceed a specified percentage of the total assets in the collective investment fund.

#### Existing Collection in Use Without an OMB Number

Assistant Secretary for Pension and Welfare Benefits Administration

Prohibited Transaction Class Exemption 77-10—Leasing of Office Space and Provision of Administrative Services and Goods to Certain Parties in Interest by Multiemployer and Multiple

Employer Plans

Recordkeeping

Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

1 total burden hours.

This class exemption compliments class exemption 78-1. It permits participating employers, unions, or another plan to lease office space from or to obtain administrative services or goods for a multiple employer or multiemployer plan.

Prohibited Transaction Class Exemption 78-6—Apprenticeship

Plans Purchasing and Leasing Property from Contributing Employers

Recordkeeping; reporting on occasion Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

5,000 recordkeepers; 417 total burden hours; 5 minutes per response.

This class exemption exempts from the prohibited transaction restrictions of ERISA transactions involving the purchase of personal property and leasing of real or personal property by an apprenticeship plan from a contributing employer or wholly owned subsidiary.

#### Reinstatement

Pension and Welfare Benefits Administration

Prohibited Transaction Class Exemption 80-83

1210-0064

Recordkeeping

Businesses or other for-profit

1 hour; 1 respondent; 1 hour per response; 0 forms.

This class exemption exempts from the prohibited transaction provisions of ERISA certain transactions involving an

<sup>1</sup> See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).



employee benefit plan's purchase of securities which may aid the issuer of the securities to reduce or retire indebtedness to a party in interest.

Prohibited Transaction Exemption 90-1 1210-0054

Recordkeeping

Business or other for-profit; small businesses or organizations

1 Respondent; 1 hour.

This exemption allows parties in interest of an employee benefit plan that invests in an insured pooled separate account to engage in transactions with the separate account if the plan's participation in the separate account does not exceed specified limits. Six year recordkeeping is required.

Signed at Washington, DC this 26th day of February, 1991.

Paul E. Larson,

Departmental Clearance Officer.

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## Employment Standards

### Administration, Wage and Hour Division

#### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (48 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the

minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

#### Supersedes Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their date of notice in the Federal Register are listed with each State. Supersedes decision numbers are in parentheses following the number of the decisions being superseded.

#### Alabama:

AL90-1 (AL91-1).....	Feb. 22, 1991.
AL90-2 (AL91-2).....	Feb. 22, 1991.
AL90-3 (AL91-3).....	Feb. 22, 1991.
AL90-4 (AL91-4).....	Feb. 22, 1991.
AL90-5 (AL91-5).....	Feb. 22, 1991.
AL90-6 (AL91-6).....	Feb. 22, 1991.
AL90-7 (AL91-7).....	Feb. 22, 1991.
AL90-8 (AL91-8).....	Feb. 22, 1991.
AL90-9 (AL91-9).....	Feb. 22, 1991.
AL90-10 (AL91-10).....	Feb. 22, 1991.
AL90-11 (AL91-11).....	Feb. 22, 1991.
AL90-12 (AL91-12).....	Feb. 22, 1991.
AL90-13 (AL91-13).....	Feb. 22, 1991.
AL90-14 (AL91-14).....	Feb. 22, 1991.
AL90-15 (AL91-15).....	Feb. 22, 1991.
AL90-16 (AL91-16).....	Feb. 22, 1991.
AL90-18 (AL91-18).....	Feb. 22, 1991.
AL90-19 (AL91-19).....	Feb. 22, 1991.
AL90-20 (AL91-20).....	Feb. 22, 1991.
AL90-21 (AL91-21).....	Feb. 22, 1991.
AL90-22 (AL91-22).....	Feb. 22, 1991.
AL90-23 (AL91-23).....	Feb. 22, 1991.
AL90-24 (AL91-24).....	Feb. 22, 1991.
AL90-25 (AL91-25).....	Feb. 22, 1991.
AL90-26 (AL91-26).....	Feb. 22, 1991.
AL90-27 (AL91-27).....	Feb. 22, 1991.
AL90-28 (AL91-28).....	Feb. 22, 1991.
AL90-29 (AL91-29).....	Feb. 22, 1991.
AL90-31 (AL91-31).....	Feb. 22, 1991.
AL90-32 (AL91-32).....	Feb. 22, 1991.
Alaska, AK90-1 (AK91-1)....	Feb. 22, 1991.

#### Arizona:

AZ90-1 (AZ91-1).....	Feb. 22, 1991.
AZ90-2 (AZ91-2).....	Feb. 22, 1991.
AZ90-3 (AZ91-3).....	Feb. 22, 1991.
AZ90-4 (AZ91-4).....	Feb. 22, 1991.

#### Arkansas:

AR90-1 (AR91-1).....	Feb. 22, 1991.
AR90-2 (AR91-2).....	Feb. 22, 1991.
AR90-3 (AR91-3).....	Feb. 22, 1991.
AR90-4 (AR91-4).....	Feb. 22, 1991.
AR90-5 (AR91-5).....	Feb. 22, 1991.
AR90-6 (AR91-6).....	Feb. 22, 1991.
AR90-7 (AR91-7).....	Feb. 22, 1991.
AR90-8 (AR91-8).....	Feb. 22, 1991.

#### California:

CA90-1 (CA91-1).....	Feb. 22, 1991.
CA90-2 (CA91-2).....	Feb. 22, 1991.
CA90-3 (CA91-3).....	Feb. 22, 1991.
CA90-4 (CA91-4).....	Feb. 22, 1991.
CA90-5 (CA91-5).....	Feb. 22, 1991.
CA90-6 (CA91-6).....	Feb. 22, 1991.
CA90-7 (CA91-7).....	Feb. 22, 1991.

#### Colorado:

CO90-1 (CO91-1).....	Feb. 22, 1991.
CO90-2 (CO91-2).....	Feb. 22, 1991.
CO90-3 (CO91-3).....	Feb. 22, 1991.
CO90-4 (CO91-4).....	Feb. 22, 1991.
CO90-5 (CO91-5).....	Feb. 22, 1991.
CO90-6 (CO91-6).....	Feb. 22, 1991.
CO90-7 (CO91-7).....	Feb. 22, 1991.
CO90-8 (CO91-8).....	Feb. 22, 1991.
CO90-9 (CO91-9).....	Feb. 22, 1991.

#### Connecticut:

CT90-1 (CT91-1).....	Feb. 22, 1991.
CT90-2 (CT91-2).....	Feb. 22, 1991.

#### Delaware:

DE90-1 (DE91-1).....	Feb. 22, 1991.
DE90-2 (DE91-2).....	Feb. 22, 1991.

#### District of Col.:

DC90-1 (DC91-1).....	Feb. 22, 1991.
DC90-2 (DC91-2).....	Feb. 22, 1991.

#### Florida:

FL90-1 (FL91-1).....	Feb. 22, 1991.
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FL90-2 (FL91-2)	Feb. 22, 1991.	GA90-31 (GA91-31)	Feb. 22, 1991.	KS90-6 (KS91-6)	Feb. 22, 1991.
FL90-3 (FL91-3)	Feb. 22, 1991.	GA90-32 (GA91-32)	Feb. 22, 1991.	KS90-7 (KS91-7)	Feb. 22, 1991.
FL90-4 (FL91-4)	Feb. 22, 1991.	GA90-33 (GA91-33)	Feb. 22, 1991.	KS90-8 (KS91-8)	Feb. 22, 1991.
FL90-5 (FL91-5)	Feb. 22, 1991.	GA90-34 (GA91-34)	Feb. 22, 1991.	KS90-9 (KS91-9)	Feb. 22, 1991.
FL90-6 (FL91-6)	Feb. 22, 1991.	GA90-35 (GA91-35)	Feb. 22, 1991.	KS90-10 (KS91-10)	Feb. 22, 1991.
FL90-7 (FL91-7)	Feb. 22, 1991.	GA90-36 (GA91-36)	Feb. 22, 1991.	KS90-11 (KS91-11)	Feb. 22, 1991.
FL90-8 (FL91-8)	Feb. 22, 1991.	GA90-37 (GA91-37)	Feb. 22, 1991.		
FL90-9 (FL91-9)	Feb. 22, 1991.	GA90-38 (GA91-38)	Feb. 22, 1991.	Kentucky:	
FL90-10 (FL91-10)	Feb. 22, 1991.			KY90-1 (KY91-1)	Feb. 22, 1991.
FL90-11 (FL91-11)	Feb. 22, 1991.	Guam:		KY90-2 (KY91-2)	Feb. 22, 1991.
FL90-12 (FL91-12)	Feb. 22, 1991.	GU90-1 (GU91-1)	Feb. 22, 1991.	KY90-3 (KY91-3)	Feb. 22, 1991.
FL90-13 (FL91-13)	Feb. 22, 1991.	Hawaii:		KY90-4 (KY91-4)	Feb. 22, 1991.
FL90-14 (FL91-14)	Feb. 22, 1991.	HI90-1 (HI91-1)	Feb. 22, 1991.	KY90-5 (KY91-5)	Feb. 22, 1991.
FL90-15 (FL91-15)	Feb. 22, 1991.	Idaho:		KY90-6 (KY91-6)	Feb. 22, 1991.
FL90-16 (FL91-16)	Feb. 22, 1991.	ID90-1 (ID91-1)	Feb. 22, 1991.	KY90-7 (KY91-7)	Feb. 22, 1991.
FL90-17 (FL91-17)	Feb. 22, 1991.	ID90-2 (ID91-2)	Feb. 22, 1991.	KY90-8 (KY91-8)	Feb. 22, 1991.
FL90-18 (FL91-18)	Feb. 22, 1991.	ID90-3 (ID91-3)	Feb. 22, 1991.	KY90-9 (KY91-9)	Feb. 22, 1991.
FL90-19 (FL91-19)	Feb. 22, 1991.	ID90-4 (ID91-4)	Feb. 22, 1991.	KY90-10 (KY91-10)	Feb. 22, 1991.
FL90-20 (FL91-20)	Feb. 22, 1991.	ID90-5 (ID91-5)	Feb. 22, 1991.	KY90-11 (KY91-11)	Feb. 22, 1991.
FL90-21 (FL91-21)	Feb. 22, 1991.	Illinois:		KY90-12 (KY91-12)	Feb. 22, 1991.
FL90-22 (FL91-22)	Feb. 22, 1991.	IL90-1 (IL91-1)	Feb. 22, 1991.	KY90-13 (KY91-13)	Feb. 22, 1991.
FL90-23 (FL91-23)	Feb. 22, 1991.	IL90-2 (IL91-2)	Feb. 22, 1991.	KY90-14 (KY91-14)	Feb. 22, 1991.
FL90-24 (FL91-24)	Feb. 22, 1991.	IL90-3 (IL91-3)	Feb. 22, 1991.	KY90-15 (KY91-15)	Feb. 22, 1991.
FL90-25 (FL91-25)	Feb. 22, 1991.	IL90-4 (IL91-4)	Feb. 22, 1991.	KY90-16 (KY91-16)	Feb. 22, 1991.
FL90-26 (FL91-26)	Feb. 22, 1991.	IL90-5 (IL91-5)	Feb. 22, 1991.	KY90-17 (KY91-17)	Feb. 22, 1991.
FL90-27 (FL91-27)	Feb. 22, 1991.	IL90-6 (IL91-6)	Feb. 22, 1991.	KY90-18 (KY91-18)	Feb. 22, 1991.
FL90-28 (FL91-28)	Feb. 22, 1991.	IL90-7 (IL91-7)	Feb. 22, 1991.	KY90-19 (KY91-19)	Feb. 22, 1991.
FL90-29 (FL91-29)	Feb. 22, 1991.	IL90-8 (IL91-8)	Feb. 22, 1991.	KY90-20 (KY91-20)	Feb. 22, 1991.
FL90-30 (FL91-30)	Feb. 22, 1991.	IL90-9 (IL91-9)	Feb. 22, 1991.	KY90-21 (KY91-21)	Feb. 22, 1991.
FL90-31 (FL91-31)	Feb. 22, 1991.	IL90-10 (IL91-10)	Feb. 22, 1991.	KY90-22 (KY91-22)	Feb. 22, 1991.
FL90-32 (FL91-32)	Feb. 22, 1991.	IL90-11 (IL91-11)	Feb. 22, 1991.	KY90-23 (KY91-23)	Feb. 22, 1991.
FL90-33 (FL91-33)	Feb. 22, 1991.	IL90-12 (IL91-12)	Feb. 22, 1991.	KY90-24 (KY91-24)	Feb. 22, 1991.
FL90-34 (FL91-34)	Feb. 22, 1991.	IL90-13 (IL91-13)	Feb. 22, 1991.	KY90-25 (KY91-25)	Feb. 22, 1991.
FL90-35 (FL91-35)	Feb. 22, 1991.	IL90-14 (IL91-14)	Feb. 22, 1991.	KY90-26 (KY91-26)	Feb. 22, 1991.
FL90-36 (FL91-36)	Feb. 22, 1991.	IL90-15 (IL91-15)	Feb. 22, 1991.	KY90-27 (KY91-27)	Feb. 22, 1991.
FL90-37 (FL91-37)	Feb. 22, 1991.	IL90-16 (IL91-16)	Feb. 22, 1991.	KY90-28 (KY91-28)	Feb. 22, 1991.
FL90-38 (FL91-38)	Feb. 22, 1991.	IL90-17 (IL91-17)	Feb. 22, 1991.	KY90-29 (KY91-29)	Feb. 22, 1991.
FL90-39 (FL91-39)	Feb. 22, 1991.	IL90-18 (IL91-18)	Feb. 22, 1991.		
FL90-40 (FL91-40)	Feb. 22, 1991.	IL90-19 (IL91-19)	Feb. 22, 1991.	Louisiana:	
FL90-42 (FL91-42)	Feb. 22, 1991.	Indiana:		LA90-1 (LA91-1)	Feb. 22, 1991.
FL90-43 (FL91-43)	Feb. 22, 1991.	IN90-1 (IN91-1)	Feb. 22, 1991.	LA90-2 (LA91-2)	Feb. 22, 1991.
FL90-44 (FL91-44)	Feb. 22, 1991.	IN90-2 (IN91-2)	Feb. 22, 1991.	LA90-3 (LA91-3)	Feb. 22, 1991.
FL90-45 (FL91-45)	Feb. 22, 1991.	IN90-3 (IN91-3)	Feb. 22, 1991.	LA90-4 (LA91-4)	Feb. 22, 1991.
FL90-46 (FL91-46)	Feb. 22, 1991.	IN90-4 (IN91-4)	Feb. 22, 1991.	LA90-5 (LA91-5)	Feb. 22, 1991.
		IN90-5 (IN91-5)	Feb. 22, 1991.	LA90-6 (LA91-6)	Feb. 22, 1991.
Georgia:		IN90-6 (IN91-6)	Feb. 22, 1991.	LA90-7 (LA91-7)	Feb. 22, 1991.
GA90-1 (GA91-1)	Feb. 22, 1991.	IN90-7 (IN91-7)	Feb. 22, 1991.	LA90-8 (LA91-8)	Feb. 22, 1991.
GA90-2 (GA91-2)	Feb. 22, 1991.	IN90-8 (IN91-8)	Feb. 22, 1991.	LA90-9 (LA91-9)	Feb. 22, 1991.
GA90-3 (GA91-3)	Feb. 22, 1991.	IN90-9 (IN91-9)	Feb. 22, 1991.		
GA90-4 (GA91-4)	Feb. 22, 1991.	IN90-10 (IN91-10)	Feb. 22, 1991.	Maine:	
GA90-5 (GA91-5)	Feb. 22, 1991.	IN90-11 (IN91-11)	Feb. 22, 1991.	ME90-1 (ME91-1)	Feb. 22, 1991.
GA90-6 (GA91-6)	Feb. 22, 1991.	IN90-12 (IN91-12)	Feb. 22, 1991.	ME90-2 (ME91-2)	Feb. 22, 1991.
GA90-7 (GA91-7)	Feb. 22, 1991.	IN90-13 (IN91-13)	Feb. 22, 1991.	ME90-3 (ME91-3)	Feb. 22, 1991.
GA90-8 (GA91-8)	Feb. 22, 1991.	IN90-14 (IN91-14)	Feb. 22, 1991.		
GA90-9 (GA91-9)	Feb. 22, 1991.	IN90-15 (IN91-15)	Feb. 22, 1991.	Maryland:	
GA90-10 (GA91-10)	Feb. 22, 1991.			MD90-1 (MD91-1)	Feb. 22, 1991.
GA90-11 (GA91-11)	Feb. 22, 1991.	Iowa:		MD90-2 (MD91-2)	Feb. 22, 1991.
GA90-12 (GA91-12)	Feb. 22, 1991.	IA90-1 (IA91-1)	Feb. 22, 1991.	MD90-3 (MD91-3)	Feb. 22, 1991.
GA90-13 (GA91-13)	Feb. 22, 1991.	IA90-2 (IA91-2)	Feb. 22, 1991.	MD90-4 (MD91-4)	Feb. 22, 1991.
GA90-14 (GA91-14)	Feb. 22, 1991.	IA90-3 (IA91-3)	Feb. 22, 1991.	MD90-5 (MD91-5)	Feb. 22, 1991.
GA90-15 (GA91-15)	Feb. 22, 1991.	IA90-4 (IA91-4)	Feb. 22, 1991.	MD90-6 (MD91-6)	Feb. 22, 1991.
GA90-16 (GA91-16)	Feb. 22, 1991.	IA90-5 (IA91-5)	Feb. 22, 1991.	MD90-7 (MD91-7)	Feb. 22, 1991.
GA90-17 (GA91-17)	Feb. 22, 1991.	IA90-6 (IA91-6)	Feb. 22, 1991.	MD90-8 (MD91-8)	Feb. 22, 1991.
GA90-18 (GA91-18)	Feb. 22, 1991.	IA90-7 (IA91-7)	Feb. 22, 1991.	MD90-9 (MD91-9)	Feb. 22, 1991.
GA90-19 (GA91-19)	Feb. 22, 1991.	IA90-8 (IA91-8)	Feb. 22, 1991.	MD90-10 (MD91-10)	Feb. 22, 1991.
GA90-20 (GA91-20)	Feb. 22, 1991.	IA90-9 (IA91-9)	Feb. 22, 1991.	MD90-11 (MD91-11)	Feb. 22, 1991.
GA90-21 (GA91-21)	Feb. 22, 1991.	IA90-10 (IA91-10)	Feb. 22, 1991.	MD90-12 (MD91-12)	Feb. 22, 1991.
GA90-22 (GA91-22)	Feb. 22, 1991.	IA90-11 (IA91-11)	Feb. 22, 1991.	MD90-13 (MD91-13)	Feb. 22, 1991.
GA90-23 (GA91-23)	Feb. 22, 1991.	IA90-12 (IA91-12)	Feb. 22, 1991.	MD90-14 (MD91-14)	Feb. 22, 1991.
GA90-24 (GA91-24)	Feb. 22, 1991.	IA90-13 (IA91-13)	Feb. 22, 1991.	MD90-15 (MD91-15)	Feb. 22, 1991.
GA90-25 (GA91-25)	Feb. 22, 1991.	IA90-14 (IA91-14)	Feb. 22, 1991.	MD90-16 (MD91-16)	Feb. 22, 1991.
GA90-26 (GA91-26)	Feb. 22, 1991.			MD90-17 (MD91-17)	Feb. 22, 1991.
GA90-27 (GA91-27)	Feb. 22, 1991.	Kansas:		MD90-18 (MD91-18)	Feb. 22, 1991.
GA90-28 (GA91-28)	Feb. 22, 1991.	KS90-1 (KS91-1)	Feb. 22, 1991.	MD90-19 (MD91-19)	Feb. 22, 1991.
GA90-29 (GA91-29)	Feb. 22, 1991.	KS90-2 (KS91-2)	Feb. 22, 1991.	MD90-20 (MD91-20)	Feb. 22, 1991.
GA90-30 (GA91-30)	Feb. 22, 1991.	KS90-3 (KS91-3)	Feb. 22, 1991.	MD90-21 (MD91-21)	Feb. 22, 1991.
		KS90-4 (KS91-4)	Feb. 22, 1991.	MD90-22 (MD91-22)	Feb. 22, 1991.
		KS90-5 (KS91-5)	Feb. 22, 1991.		
				Massachusetts:	
				MA90-1 (MA91-1)	Feb. 22, 1991.



MA90-2 (MA91-2).....	Feb. 22, 1991.	MO90-5 (MO91-5).....	Feb. 22, 1991.	North Carolina:	
MA90-3 (MA91-3).....	Feb. 22, 1991.	MO90-6 (MO91-6).....	Feb. 22, 1991.	NC90-1 (NC91-1).....	Feb. 22, 1991.
MA90-4 (MA91-4).....	Feb. 22, 1991.	MO90-7 (MO91-7).....	Feb. 22, 1991.	NC90-2 (NC91-2).....	Feb. 22, 1991.
MA90-5 (MA91-5).....	Feb. 22, 1991.	MO90-8 (MO91-8).....	Feb. 22, 1991.	NC90-3 (NC91-3).....	Feb. 22, 1991.
Michigan:		MO90-9 (MO91-9).....	Feb. 22, 1991.	NC90-4 (NC91-4).....	Feb. 22, 1991.
MI90-1 (MI91-1).....	Feb. 22, 1991.	MO90-10 (MO91-10).....	Feb. 22, 1991.	NC90-5 (NC91-5).....	Feb. 22, 1991.
MI90-2 (MI91-2).....	Feb. 22, 1991.	MO90-11 (MO91-11).....	Feb. 22, 1991.	NC90-6 (NC91-6).....	Feb. 22, 1991.
MI90-3 (MI91-3).....	Feb. 22, 1991.	MO90-12 (MO91-12).....	Feb. 22, 1991.	NC90-7 (NC91-7).....	Feb. 22, 1991.
MI90-4 (MI91-4).....	Feb. 22, 1991.	Montana:		NC90-8 (NC91-8).....	Feb. 22, 1991.
MI90-5 (MI91-5).....	Feb. 22, 1991.	MT90-1 (MT91-1).....	Feb. 22, 1991.	NC90-9 (NC91-9).....	Feb. 22, 1991.
MI90-6 (MI91-6).....	Feb. 22, 1991.	MT90-2 (MT91-2).....	Feb. 22, 1991.	NC90-10 (NC91-10).....	Feb. 22, 1991.
MI90-7 (MI91-7).....	Feb. 22, 1991.	MT90-3 (MT91-3).....	Feb. 22, 1991.	NC90-11 (NC91-11).....	Feb. 22, 1991.
MI90-8 (MI91-8).....	Feb. 22, 1991.	MT90-4 (MT91-4).....	Feb. 22, 1991.	NC90-12 (NC91-12).....	Feb. 22, 1991.
MI90-9 (MI91-9).....	Feb. 22, 1991.	MT90-5 (MT91-5).....	Feb. 22, 1991.	NC90-13 (NC91-13).....	Feb. 22, 1991.
MI90-10 (MI91-10).....	Feb. 22, 1991.	MT90-6 (MT91-6).....	Feb. 22, 1991.	NC90-14 (NC91-14).....	Feb. 22, 1991.
MI90-11 (MI91-11).....	Feb. 22, 1991.	MT90-7 (MT91-7).....	Feb. 22, 1991.	NC90-15 (NC91-15).....	Feb. 22, 1991.
MI90-12 (MI91-12).....	Feb. 22, 1991.	MT90-8 (MT91-8).....	Feb. 22, 1991.	NC90-16 (NC91-16).....	Feb. 22, 1991.
MI90-13 (MI91-13).....	Feb. 22, 1991.	Nebbraska:		NC90-17 (NC91-17).....	Feb. 22, 1991.
MI90-14 (MI91-14).....	Feb. 22, 1991.	NE90-1 (NE91-1).....	Feb. 22, 1991.	NC90-18 (NC91-18).....	Feb. 22, 1991.
MI90-15 (MI91-15).....	Feb. 22, 1991.	NE90-2 (NE91-2).....	Feb. 22, 1991.	NC90-19 (NC91-19).....	Feb. 22, 1991.
MI90-16 (MI91-16).....	Feb. 22, 1991.	NE90-3 (NE91-3).....	Feb. 22, 1991.	NC90-20 (NC91-20).....	Feb. 22, 1991.
MI90-17 (MI91-17).....	Feb. 22, 1991.	NE90-4 (NE91-4).....	Feb. 22, 1991.	NC90-21 (NC91-21).....	Feb. 22, 1991.
MI90-18 (MI91-18).....	Feb. 22, 1991.	NE90-5 (NE91-5).....	Feb. 22, 1991.	NC90-22 (NC91-22).....	Feb. 22, 1991.
MI90-19 (MI91-19).....	Feb. 22, 1991.	NE90-6 (NE91-6).....	Feb. 22, 1991.	NC90-23 (NC91-23).....	Feb. 22, 1991.
MI90-20 (MI91-20).....	Feb. 22, 1991.	NE90-7 (NE91-7).....	Feb. 22, 1991.	NC90-24 (NC91-24).....	Feb. 22, 1991.
Minnesota:		NE90-8 (NE91-8).....	Feb. 22, 1991.	NC90-25 (NC91-25).....	Feb. 22, 1991.
MN90-1 (MN91-1).....	Feb. 22, 1991.	NE90-9 (NE91-9).....	Feb. 22, 1991.	NC90-26 (NC91-26).....	Feb. 22, 1991.
MN90-2 (MN91-2).....	Feb. 22, 1991.	NE90-10 (NE91-10).....	Feb. 22, 1991.	NC90-27 (NC91-27).....	Feb. 22, 1991.
MN90-3 (MN91-3).....	Feb. 22, 1991.	NE90-11 (NE91-11).....	Feb. 22, 1991.	NC90-28 (NC91-28).....	Feb. 22, 1991.
MN90-4 (MN91-4).....	Feb. 22, 1991.	NE90-12 (NE91-12).....	Feb. 22, 1991.	NC90-29 (NC91-29).....	Feb. 22, 1991.
MN90-5 (MN91-5).....	Feb. 22, 1991.	NE90-13 (NE91-13).....	Feb. 22, 1991.	NC90-30 (NC91-30).....	Feb. 22, 1991.
MN90-6 (MN91-6).....	Feb. 22, 1991.	Nevada:		NC90-31 (NC91-31).....	Feb. 22, 1991.
MN90-7 (MN91-7).....	Feb. 22, 1991.	NV90-1 (NV91-1).....	Feb. 22, 1991.	NC90-32 (NC91-32).....	Feb. 22, 1991.
MN90-8 (MN91-8).....	Feb. 22, 1991.	NV90-2 (NV91-2).....	Feb. 22, 1991.	NC90-33 (NC91-33).....	Feb. 22, 1991.
MN90-9 (MN91-9).....	Feb. 22, 1991.	NV90-3 (NV91-3).....	Feb. 22, 1991.	North Dakota:	
MN90-10 (MN91-10).....	Feb. 22, 1991.	NV90-4 (NV91-4).....	Feb. 22, 1991.	ND90-1 (ND91-1).....	Feb. 22, 1991.
MN90-11 (MN91-11).....	Feb. 22, 1991.	NV90-5 (NV91-5).....	Feb. 22, 1991.	ND90-2 (ND91-2).....	Feb. 22, 1991.
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#### Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office

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Oregon, OR91-1 (Feb. 22, 1991) p. 371, p. 385.

#### General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 15th day of February 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-4183 Filed 2-28-91; 8:45 am]

BILLING CODE 4510-27-M

#### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wage payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from



their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

#### New General Wage Determination

##### Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers(s).

##### Volume I

Alabama, AL91-33 (Mar. 1, 1991). p. 62a.  
p. 62b.

##### Volume II

Ohio, OH91-36 (Mar. 1, 1991). p. 952a.  
p. 952b.

#### Supersedes Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their date of notice in the **Federal Register** are listed with each State. Supersedes decision numbers are in parentheses following the number of the decisions being superseded.

##### Volume I

##### South Carolina:

SC91-9 (Mar. 1, 1991)..... p.1172a.  
p.1172b.  
p.1172c.  
p.1172d.  
SC91-11 (Mar. 1, 1991)..... p.1172e.  
p.1172f.  
p.1172g.  
p.1172h.  
SC91-12 (Mar. 1, 1991)..... p.1172i.  
p.1172j.  
p.1172k.  
p.1172l.  
SC91-13 (Mar. 1, 1991)..... p.1172i.  
p.1172j.  
p.1172k.  
p.1172l.  
SC91-14 (Mar. 1, 1991)..... p.1172k.  
p.1172l.

#### Modifications to General Wage Determinations Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

##### Volume I

Alabama, LA91-5 (Feb. 22, 1991). p.9.  
p.10.  
Florida, FL91-17 (Feb. 22, 1991). p.141.  
p.142.  
Pennsylvania:.....  
PA91-5 (Feb. 22, 1991)..... p.995.  
p.996.  
Virginia:  
VA91-31 (Feb. 22, 1991).... p.1317.  
VA91-32 (Feb. 22, 1991).... p.1319.  
VA91-41 (Feb. 22, 1991).... p.1339.  
VA91-47 (Feb. 22, 1991).... p.1351.  
p.1352.  
VA91-48 (Feb. 22, 1991).... p.1353.  
VA91-49 (Feb. 22, 1991).... p.1355.  
VA91-51 (Feb. 22, 1991).... p.1361.  
VA91-53 (Feb. 22, 1991).... p.1365.  
VA91-54 (Feb. 22, 1991).... p.1367.  
VA91-55 (Feb. 22, 1991).... p.1369.  
p.1370.  
VA91-60 (Feb. 22, 1991).... p.1381.  
VA91-65 (Feb. 22, 1991).... p.1389.  
VA91-70 (Feb. 22, 1991).... p.1399.

##### Volume II

Indiana, IN91-6 (Feb. 22, 1991). p.315.  
p.320.  
Louisiana, LA91-4 (Feb. 22, 1991). p.399.  
pp. 402-403.

##### Volume III

None.

#### General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This

publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S.

Government Printing Office,

Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC This 2nd Day of Feb. 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-4689 Filed 2-28-91; 8:45 am]

BILLING CODE 4510-27-M

#### Employment and Training Administration

#### Secretary's Commission on Achieving Necessary Skills; Open Meeting

**AGENCY:** Employment and Training Administration, Labor.

**SUMMARY:** The Secretary's Commission on Achieving Necessary Skills (SCANS) was established in accordance with the Federal Advisory Committee Act (Pub. L. 92-463) on February 20, 1990. The SCANS is to advise the Secretary on national competency guidelines for the skills required of high school graduates for entry into employment. The Commission has the practical task of specifying and quantifying levels of skill's attainment to perform different types of jobs adequately.

**TIME AND PLACE:** The fifth meeting will be held Friday, March 15, 1991 from 9 a.m. until 5 p.m. in the Ball Room East, Holiday Inn Crowne Plaza, 300 Army/Navy Drive (Crystal City), Arlington, Virginia 22202.

**AGENDA:** The agenda for the meeting follows:

1. Introduction of meeting agenda
2. Presentation on job analysis findings
3. (Functional) Group discussions on functional skill definitions and minimums
4. Full Commission discussion of functional skill definitions and minimums

Lunch



5. Presentations by The College Board and ETS
6. Presentation on Board
7. Presentation on Assessment
8. General Discussion on Assessment and Board
9. Public Comment
10. Adjourn

**PUBLIC PARTICIPATION:** The meeting will be open to the public. Time will be set aside for public comments. Seating will be available for the public on a first-come, first-serve basis. Five seats will be reserved for the media. Handicapped individuals wishing to attend should contact the Commission to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send 10 copies to Dr. Arnold Packer, Executive Director, SCANS—room C-2318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Papers received on or before March 5, 1991 will be included in the record of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Packer, Exec. Dir., SCANS—room C-2318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-4840.

Signed at Washington, DC this 25th day of February, 1991.

Lynn Martin,  
Secretary of Labor.

[FR Doc. 91-4804 Filed 2-28-91; 8:45 am]

BILLING CODE 4510-23-M

## Mine Safety and Health Administration

### Petitions for Modification; Beaver Creek Coal Co. et al.

The following parties have filed petitions to modify the application of mandatory safety standards under 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Beaver Creek Coal Company, P.O. Box 1378, Price, Utah 84501 has filed a petition (M-91-09-C) to modify the application of 30 CFR 75.1805 (examination of electrical equipment; recording requirements; approved books) to its Trail Mountain No. 9 Mine (I.D. No. 42-01211) located in Emery County, Utah. The petitioner requests modification of the approved books for recording the results of electric equipment examinations.

2. Jim Walter Resources, Inc., 5920 Mud Creek Road, Adger, Alabama 35006 has filed a petition (M-91-10-C) to modify the application of 30 CFR 75.303 (preshift examinations) to its No. 3 Mine (I.D. No. 01-00758) located in Jefferson County, Alabama. The petitioner

proposes to remotely monitor seals for methane and carbon monoxide in lieu of an examination by a certified person.

3. Island Creek Coal Company, P.O. Box 11430, Lexington, Kentucky 40575-1430 has filed a petition (M-91-11-C) to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Hamilton No. 2 Mine (I.D. No. 15-02706) located in Union County, Kentucky. Due to hazardous roof conditions, the petitioner proposes to monitor for hazardous conditions outby the seals.

4. Kerr-McGee Coal Corporation, P.O. Box 727, Harrisburg, Illinois 62946 has filed a petition (M-91-12-C) to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Galatia Mine 56-1 (I.D. No. 11-02752) located in Saline County, Illinois. The petitioner proposes to use electric nonpermissible motor-driven mine equipment in the longwall recovery area.

5. Trapper Mining, Inc., P.O. Box 187, Craig, Colorado 81628 has filed a petition (M-91-13-C) to modify the application of 30 CFR 77.1304 (blasting agents; special provisions) to its Trapper Mine (I.D. No. 05-02838) located in Moffat County, Colorado. The petitioner requests a modification of the standard to permit the use of fuel oil, blended with recycled oil as a blasting agent.

6. Trent Coal, Inc., R.D. #1, Friedens, Pennsylvania 15541 has filed a petition (M-91-14-C) to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Rice No. 2 Mine (I.D. No. 36-03836) located in Cambria County, Pennsylvania. The petitioner proposes to conduct weekly examinations on both sides of a cave in a section return entry.

### Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 1, 1991. Copies of the petitions are available for inspection at that address.

Dated: February 19, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-4910 Filed 2-28-91; 8:45 am]

BILLING CODE 4510-43-M

### Petitions for Modification; Cyprus Empire Corp., et al.

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Cyprus Empire Corporation, P.O. Box 68, Craig, Colorado 81265 has filed a petition (M-91-04-C) to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its Eagle No. 5 Mine (I.D. No. 05-01370) located in Moffat County, Colorado. The petitioner proposes to operate a submersible pump in a borehole with a modified ground monitor system.

2. Freeman United Coal Mining Company, P.O. Box 100, West Frankfort, Illinois 62896 has filed a petition (M-91-06-C) to modify the application of 30 CFR 75.901 (protection of low- and medium-voltage three-phase circuits used underground) to its Orient No. 6 Mine (I.D. No. 11-00599) located in Jefferson County, Illinois. The petitioner proposes to operate a diesel powered generator without an earth referenced grounded system.

3. Arch of Kentucky, Inc., P.O. Box 737, Lynch, Kentucky 40855 has filed a petition (M-91-07-C) to modify the application of 30 CFR 75.328 (aircourses and belt haulage entries) to its No. 37 Mine (I.D. No. 15-04670) located in Harland County, Kentucky. The petitioner proposes to use air ventilating belt haulage entries to ventilate active working places.

4. Mid-Continent Resources, Inc., P.O. Box 158, Carbondale, Colorado 81623 has filed a petition (M-91-08-C) to modify the application of 30 CFR 77.1605(k) (berms or guards on elevated roadways) to its Dutch Creek Mine (I.D. No. 05-00301) located in Pitkin County, Colorado. The petitioner proposes to include all roads at mine site in a previously granted petition allowing roadways to be used without berms or guards being provided.

### Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 1, 1991. Copies of the petitions are available for inspection at that address.



Dated: February 1, 1991.

Patricia W. Silvey,  
Director, Office of Standards, Regulations  
and Variances.

[FR Doc. 91-4911 Filed 2-28-91; 8:45 am]

BILLING CODE 4510-43-M

## Occupational Safety and Health Administration

[V-90-1]

### Gannett Outdoor Companies: Variance Applications

**AGENCY:** Occupational Safety and  
Health Administration, Labor.

**ACTION:** Grant of variance.

**SUMMARY:** This notice announces the  
grant of variance to Gannett Outdoor  
Companies from the standards  
prescribed in 29 CFR 1910.27(d)(1)(ii)  
and 29 CFR 1910.27(d)(2) concerning  
fixed ladders used in general industry.

**DATES:** The effective date of the  
variance is March 1, 1991.

#### FOR FURTHER INFORMATION CONTACT:

James J. Concannon, Director, Office of  
Variance Determination,  
Occupational Safety and Health  
Administration, U.S. Department of  
Labor, Third Street and Constitution  
Avenue, NW., room N3653,  
Washington, DC 20210, Telephone:  
(202) 523-7193.

Or the following Regional and Area  
Offices:

- U.S. Department of Labor—OSHA, 133  
Portland Street, 1st Floor, Boston,  
Massachusetts 02114.
- U.S. Department of Labor—OSHA,  
Federal Office Building, 450 Main  
Street—room 508, Hartford,  
Connecticut 06103.
- U.S. Department of Labor—OSHA, 201  
Varick Street—room 670, New York,  
New York 10014.
- U.S. Department of Labor—OSHA, 500  
Route 17 South, Hasbrouck Heights,  
New Jersey 07604.
- U.S. Department of Labor—OSHA, 32nd  
Floor—room 3244, 230 South Dearborn  
Street, Chicago, Illinois 60604.
- U.S. Department of Labor—OSHA, 2360  
East Devon Avenue, suite 1010, Des  
Plaines, Illinois 60018.
- U.S. Department of Labor—OSHA, 525  
Griffin Square—room 602, Dallas,  
Texas 75202.
- U.S. Department of Labor—OSHA, 2320  
LaBranch Street—room 1103, Houston,  
Texas 7704.
- U.S. Department of Labor—OSHA, 911  
Walnut Street—room 406, Kansas  
City, Missouri 64106.

U.S. Department of Labor—OSHA, 4300  
Goodfellow Boulevard, Building 105E,  
St. Louis, Missouri 63120.

U.S. Department of Labor—OSHA,  
Federal Building—room 1576, 1961  
Stout Street, Denver, Colorado 80294.

U.S. Department of Labor—OSHA, 1244  
Speer Boulevard—suite 360, Denver,  
Colorado 80204.

U.S. Department of Labor—OSHA, 3221  
North 16th Street—suite 100, Phoenix,  
Arizona 85016.

#### I. Background

Gannett Outdoor Companies, 535  
Madison Avenue, New York, New York  
10022 has made application pursuant to  
section 6(d) of the Occupational Safety  
and Health Act of 1970 (84 Stat. 1596); 29  
U.S.C. 655 and 29 CFR 1905.11 for a  
variance from the Safety standards  
prescribed in 29 CFR 1910.27(d)(1)(ii),  
1910.27(d)(2) and 1910.27(d)(5). The  
standards set requirements governing  
the use of fixed ladders.

The addresses of the places of  
employment that will be affected by the  
application are as follows:

Gannett Outdoor Co., Inc., of New  
Jersey, 185 U.S. Highway 46, Fairfield,  
NJ 07006.

Gannett Outdoor Co. of Colorado, 4647  
Ledyen, Denver, CO 80216.

Gannett Outdoor Co. of Texas, Katy  
Freeway/1600 Studemont, Houston,  
TX 77007.

Gannett Outdoor Co. of Kansas City,  
2459 Summit Street, Kansas City, MO  
64108.

Gannett Outdoor Co. of Connecticut, 119  
Water Street, New Haven, CT 06500.

Gannett Outdoor Co. of Kansas City d/  
b/a, Gannett Outdoor Co. of St. Louis,  
6767 N. Hanley Rd., St. Louis, MO  
63134.

Gannett Outdoor Co. of Kansas City d/  
b/a, Gannett Outdoor Co. of Chicago,  
suite 200, 444 N. Michigan Avenue,  
Chicago, IL 60611.

Gannett Outdoor Co. of Arizona, 2502  
North Black Canyon Highway, P.O.  
Box 934, Phoenix, AZ 85009.

The Federal Register notice of June 29,  
1990 (55 FR 26796) notified the public  
that OSHA had received the variance  
application and invited interested  
persons, including affected employers  
and employees, to submit written  
comments, data, views and arguments  
regarding the grant or denial of the  
variance requested. In addition, affected  
employers and employees were notified  
of their right to request a hearing on the  
variance application. There were five  
responses to the Federal Register notice  
of Gannett Outdoor Companies  
application (Docket No. Gannett 1-90—  
Exhibits 3-1 through 3-5). The issues

raised by the commentators are  
discussed below. No request for a  
hearing was received.

Where variance requests involve  
multiple locations, including one or more  
in a state with an approved  
occupational safety and health plan, the  
variance is granted under the Federal/  
State Reciprocity Agreement established  
at 29 CFR 1905.14(b)(3) and under the  
provisions of 29 CFR 1952.9. Under those  
provisions, a permanent variance  
granted by Federal OSHA takes effect in  
state plan states insofar as the pertinent  
state standards are identical to those  
promulgated by Federal OSHA.

The Gannett Outdoor Companies  
variance request involved multiple  
locations, including the States of  
Arizona, California and Michigan, which  
have OSHA-approved occupational  
safety and health plans. Our review of  
the state plans revealed that only the  
State of Arizona has fixed ladder  
standards identical to the Federal  
standards. The state of California  
exempts cages or wells on "Fixed  
ladders on outdoor advertising  
structures, where employees wear and  
use approved safety belts and lanyards  
which can be utilized if a rest period is  
required" (section 3277, title 8—Register  
85, No. 9-3-2-85). On the other hand, the  
State of Michigan requires that a cage,  
well or ladder safety device be provided  
on a fixed ladder between 20 and 30 feet  
in unbroken length (Michigan  
Administrative Code Rule 408.10351(1)).  
For the purpose of its Michigan  
operations, the applicant would request  
a variance directly from the state of  
Michigan.

#### II. Facts

Gannett Outdoor Companies, the  
applicant, is engaged in the outdoor  
advertising business where it uses  
billboard-type signs, usually on their  
own structural supports, that in most  
cases are placed well above the ground  
level. Employees must climb to a work  
platform at the bottom of the sign face to  
change the message on the sign or to  
perform maintenance.

While on the work platform,  
employees wear a safety belt or harness  
with a lanyard attached to a cable or  
other anchorage fastened to the sign  
structure, as a positive means of fall  
prevention. The applicant uses two  
types of signs. The smaller signs, known  
as "posters," have a sign face of 12' x 25'  
on which preprinted messages are  
posted. The larger signs are known as  
"bulletins" or "rotary bulletins." A  
bulletin has a sign face of 14' x 48',  
which consists of preprinted plywood  
panels that are attached to the sign



structure, usually with the assistance of a boom truck. The advertising messages on both types of signs are changed at regular intervals. Posters are usually changed monthly and bulletins are usually "rotated" every two months. Gannett Outdoor Companies currently maintains approximately 17,361 posters and 4,368 bulletins.

Where the work platform is low (usually 15 feet or less above grade), workers use only portable aluminum ladders to gain access to the platform. On platforms more than 15 feet above grade, there is usually a metal ladder permanently attached to the sign structure. To restrict public access to work platforms, the fixed ladder on most signs starts at 12 to 15 feet above grade. Employees climb a portable ladder to reach the bottom of the fixed ladder and then climb the fixed ladder up to the work platform. This means of ascent, with combined use of fixed and portable ladders shall hereinafter be referred to as a combination ladder. The average height above grade of the applicant's sign platforms is approximately 23 feet.

The applicant requests a variance from the following standards:

29 CFR 1910.27(d)(1)(ii), which requires that cages and wells be provided on ladders of more than 20 feet to a maximum unbroken length of 30 feet;

29 CFR 1910.27(d)(2), which states in part that when ladders are used to ascend to heights exceeding 20 feet, landing platforms shall be provided for each 30 feet of height or fraction thereof, except that, where no cage, wells or ladder safety device is provided, landing platforms shall be provided for each 20 feet of height or fraction thereof.

29 CFR 1910.27(d)(5), which states that ladder safety devices may be used on towers, water tanks and chimney ladders over 20 feet in unbroken length in lieu of cage protection. No landing platform is required when ladder safety devices are used.

The purpose of the cage, well and landing platform standards is to require an appropriate means of rest should a climber become fatigued. The ladder safety device is designed either to prevent accidental falls from ladders or to limit the length of such falls.

In lieu of installing cages or wells and landing platforms as required by 29 CFR 1910.27(d)(1)(ii) and 29 CFR 1910.27(d)(2), respectively, the applicant proposes to equip a qualified climber with an 18-inch lanyard attached to a safety belt or harness for climbs either on fixed ladders up to 50 feet or a height up to 65 feet from grade. A qualified climber (as defined in the proposed § 1910.21(b), April 10, 1990) is "An employee who by virtue of physical capabilities, training, work experience and job assignment, is authorized by the employer to routinely

climb fixed ladders, step belts or similar climbing device attached to structures." The applicant states that the 18-inch lanyard provides a ladder rest attachment which is as safe for the climber as the use of a cage, well or landing platform. For ladders on which the length of climb exceeds 50 feet or which ascend to heights exceeding 65 feet from grade, whichever is less, the applicant proposes to have a climber use a ladder safety device in lieu of cages, wells or landing platforms.

Moreover, the applicant will continue to require all of its employees who routinely climb fixed ladders to undergo training in climbing and demonstrate the physical capability to perform the necessary climbs safely. The applicant will permit only workers who satisfy the "qualified climber" requirements regarding training and physical ability, found in the proposed revision of 29 CFR part 1910, subpart D (proposed § 1910.32(b)(5); April 10, 1990), to climb fixed ladders. According to the applicant, this will result in additional safety, compared to compliance with the existing standards, because of the assurance that qualified climbers have the training and physical ability to climb ladders safely. The use of fixed ladders on outdoor advertising signs is not mandated by any past or current OSHA standard. Therefore, the applicant could substitute the use of portable ladders for climbs up to 60 feet above grade (29 CFR 1910.26(a)(2)(ii)). The applicant states that the practice of using its combination ladders has been and continues to be regarded by the outdoor advertising industry as inherently safer than using portable ladders to reach all sign platforms.

There has never been a safety problem with the applicant's use of combination ladders on outdoor advertising structures. All available accident records indicate that the risk of falls by workers while climbing the fixed ladder portion of its combination ladder is virtually nonexistent. From 1969 to 1977, for example, the three largest outdoor advertising companies in California, with a combined total of 21,000 structures, recorded no falls by employees from fixed ladders. Employees of those three California companies made over 1.5 million climbs during that period without a single fall. The applicant notes that more recent statistics confirm that conclusion. The Gannett Outdoor companies of California, for example, shows no falls from fixed ladders in 1984 to the present. During that period, employees of the Gannett Outdoor Companies of California made over 205,000 climbs. In addition, the records for a recent five

year period at Gannett Outdoor companies of Michigan, which has over 3,500 signs, indicate that no employees feel while climbing fixed ladders on sign structures. Thus, the applicant's use of fixed combination ladders, without cages, wells or landing platforms does not appear to present a safety hazard. In support of the application, the applicant has submitted a detailed training program which outlines safe work procedures for, among other things, the use of combination ladders and 18-inch rest lanyards.

### III. Comments

In response to the Federal Register notice published on June 29, 1990 (50 FR 26797), five comments were received (Docket No. V-90-1, Exhibits 3-1 through 3-5).

In one of the comment letters (Ex. 3-1), the commenters asked OSHA to deny Gannett's application, but the substance of their comment provided some support for the application. First, the commenters did not request that OSHA require the installation of cages or wells on fixed ladders. Second, the commenters advocated the use of ladder safety devices on all fixed ladders and expressed concern that, under the permanent variance, the applicant would discontinue the use of those ladder safety devices already installed on billboard ladders in favor of rest lanyards. OSHA notes that the variance application proposes the use of ladder safety devices in lieu of cages or wells on sign structures which satisfy the height criteria set out in the Facts discussion above. In addition, the applicant has informed OSHA that ladder safety devices have already been installed on some of its billboards and that those devices will not be removed. Finally, the commenters, in effect, agreed with the applicant that while shifting to the use of portable ladders to access the taller signs would not violate current regulations, such a change would present a greater hazard for employees. One of the commenters who was involved in the preparation of Ex. 3-1 restated the points discussed above in a comment (Ex. 10-214 in Docket S-041) on Issue #1 (Application of Qualified Climber concept to Outdoor Advertising Industry and Use of Rest Lanyards by Qualified Climbers) of the hearing notice for proposed subpart D.

Two of the respondents (Exs. 3-2 and 3-3) did not discuss the merits of the variance application, but supported the comments presented above (Ex. 3-1). One of the respondents (Ex. 3-3) urged OSHA to deny the variance application based on the general safety concerns



expressed by the commentators in Ex 3-1.

One commenter (Ex. 3-4) objected to the granting of the variance and recommended a ladder safety device as a means of protecting employees from fall hazards while climbing fixed ladders to access working platforms. The commenter also addressed general billboard safety issues rather than matters pertinent to the variance application. These issues will be addressed in the above-mentioned subpart D rulemaking.

Another commenter (Ex. 3-5) stated "the use of a portable ladder to make a mid-air transfer to a fixed ladder without even the benefit of a landing platform should be discouraged." Regarding the use of an 18-inch rest lanyard, the commenter stated that the variance would not offer protection equal to or better than that provided through compliance with the existing standards. In particular, the commenter stated:

A ladder cage is always in place providing protection without effort by the employee. It provides protection should an employee fall backwards allowing them a chance to catch themselves and get another grip on the ladder. The proposed eighteen-inch lanyard would not protect the employee who loses their grip or missteps on the ladder.

The commenter also stated that compared to a ladder safety device, which would protect the employee by arresting a fall, "there is no reason to consider this variance request equal to existing standards nor better." OSHA notes, however, that existing 29 CFR 1910.27(d)(5), which regulates the use of ladder safety devices, does not provide for the use of ladder safety devices on billboard ladders.

Moreover, cage and well installation can be hazardous. As one member of the California OSHA Advisory Committee put it in the "minutes" of a meeting where the promulgation of California exception to the fixed ladders standard (discussed above) was considered:

People in the outdoor advertising industry were highly expertise at working from and climbing ladders as would be firemen, linemen, etc. It was recognized that because of the safety belt system that we utilized and that each employee wear a safety belt when working above ground at any height, the outdoor advertising employee had a built in safety that superseded whatever advantage a cage could supply. A cage does not prevent a fall, but merely gives the victim something to bounce off from or become entangled into on the way down.

According to the Outdoor Advertising Association of American, Inc. (OAAA) (Ex. 3-62 in Docket S-041, the walking and working surfaces rulemaking

record), only physically qualified climbers are allowed to climb fixed ladders on sign platforms. Workers climb the combination ladders as part of their daily work routine and receive extensive training in their use and maintenance.

Moreover, the OAAA explained:

The unique elevated access of fixed ladders in the outdoor advertising industry does not lend itself to the use of cages. Pursuant to 29 CFR 1910.27(d)(1)(iv) the bottom of the cage must be at a level not less than seven feet above the point of access. A fixed ladder on a sign structure that is at a height of 25 feet from grade, with an access point of 15 feet from grade, is only 10 feet in length. If the cage requirement applied to that situation, the cage would start only 3 feet from the bottom of the work-platform.

OSHA received testimony supporting the variance application at the public hearing on proposed subpart D from the Sign & Pictorial Painters Local Union 820 (Tr. 9-11-90, p. 57), the OAAA (Tr. 9-11-90, p. 83) and the United Steelworkers of America (Tr. 9-14-90, p. 1387). In addition, the posthearing submission by Penn Advertising, Inc. (Ex. 84) supported the variance application and indicated that Penn's fall protection program for climbers was very similar to that set out in the variance application.

#### IV. Decision

As noted above, the use of fixed ladders on outdoor advertising signs has never been mandated by OSHA. Therefore, Gannett could have its employees access billboards by complying with existing 29 CFR 1910.25 or 1910.26, using portable extension ladders up to 60 feet in length. The applicant and other members of the outdoor advertising industry have indicated that the use of a combination ladder, as described above, is inherently safer than using only portable ladders to reach all sign platforms. OSHA believes that where the fixed ladder sections of combination ladders extend less than 50 feet or where the height of the platform above grade is less than 65 feet the installation and maintenance of ladder safety devices, cages, wells or landing platforms on those fixed ladders would expose employees to a greater hazard than having climbs performed by qualified climbers equipped with rest lanyards.

The State of California has allowed the use of a rest lanyard in lieu of cages or wells since 1978. As stated above, the California standard does not require that "Fixed ladders on outdoor advertising structures, have a cage or well, where employees use an approved safety belt and lanyard which can be used if a rest period is required."

As noted above, Gannett Outdoor of California shows no falls from fixed ladders during 1984 to the present. During that period workers for Gannett Outdoor of California made over 250,000 climbs. The other accident data indicate that the applicant has never had a problem ensuring the safety of its employees while using combination ladders.

Although the applicant has requested a variance from the ladder safety device requirement in 29 CFR 1910.27(d)(5), such devices are not required on billboard ladders. Therefore, OSHA has determined that a variance from 29 CFR 1910.27(d)(5) is not necessary. However, the Order accompanying this notice requires the applicant to use ladder safety devices to assure the safety of employees climbing fixed ladders at heights over 65 feet from grade or when length of fixed ladder climb is over 50 feet, whichever is less. Moreover, the Order provides that the applicant will maintain and use those ladder safety devices currently installed on its billboard fixed ladders. Based on its review of the record for this proceeding and its evaluation of the potential fall hazards for qualified climbers on combination ladders, OSHA has determined that ladder safety devices need not be installed on fixed ladders which are below the thresholds discussed above.

OSHA has determined that the successful completion of the applicant's training program in conjunction with the use of 18-inch rest lanyards, as set out in the Order below, will permit the applicant's employees to perform the necessary climbs safely.

The Agency notes that, based on existing 29 CFR 1910.27(d)(1)(iv) (which requires that cages extend down a ladder to within 7 to 8 feet above the base), if OSHA required installation of cages on billboard fixed ladders, the cages would start between 2 and 3 feet from the bottom of most work platforms. OSHA believes this scenario indicates that application of 29 CFR 1910.27(d)(1)(iii) and (d)(2) to billboard ladders is not appropriate. Therefore, pending completion of the subpart D rulemaking, the Agency will require Gannett to comply with the Order set out below in lieu of complying with the above-referenced standards.

The 50-foot limit on the length of fixed ladders covered by this variance is based on ergonomic data, which indicates that employees can climb 50 feet on a fixed ladder without increased risk of falling due to fatigue. The limit is also based on proposed subpart D (proposed 29 CFR 1910.23(c)(16)). The



proposed requirement, which is based on the ANSI standard for fixed ladders, A14.3-1984, section 4.1, provides that the length of continuous climb on a fixed ladder equipped only with a cage or well shall not exceed 50 feet. Insofar as OSHA has concluded that the applicant's alternative means of compliance with the existing fixed ladder standards is equivalent to the use of cages or wells, the Agency believes it is appropriate to set consistent limits on their use.

As part of the Order, the applicant will be required to comply with the provisions for "qualified climbers" set out in proposed subpart D (proposed 29 CFR 1910.32(b)(5)). Compliance with the "qualified climber" provision will ensure that all employees using 18-inch rest lanyards in lieu of cages or wells have been properly trained and are physically capable of climbing safely.

It appears from the application, and supporting data that the use of an 18-inch rest lanyard is as safe as the use of cages, wells, or landing platforms for resting should a climber become fatigued. The applicant has furnished information which indicates that there have been no accidents while using the fixed combination ladders, that the applicant's training program ensures the safety of employees who climb combination ladders, and that only qualified climbers will be allowed to use the 18-inch rest lanyard. Therefore, based on the record discussed above, OSHA has determined that compliance with the terms of the Order set out below, will provide employment and places of employment which are safe and healthful as those which would be provided if the applicant were to comply with the requirements of 29 CFR 1910.27(d)(1)(ii) and 29 CFR 1910.27(d)(2).

#### IV. Order

Pursuant to section 6(d) of the Occupational Safety and Health Act of 1970, the Secretary of Labor's Order No. 1-91 (55 FR 9033) and 29 CFR part 1905, it is ordered that Gannett Outdoor Companies is authorized to comply with the following conditions in lieu of complying with the provisions in 29 CFR 1910.27(d)(1)(ii) and 1910.27(d)(2).

1. Each employee who climbs combination ladders shall wear a safety belt or body harness equipped with an appropriate 18-inch rest lanyard as a means to tie off to the fixed ladder on lengths of climbs on fixed ladder of up to feet or heights of up to 65 feet from grade.

2. Each employee shall have both hands free of tools or material when climbing or descending a ladder.

3. Each employee who climbs combination ladders where the length of fixed ladder climb exceeds 50 feet or where the ladder ascends to heights exceeding 65 feet from grade shall be protected through the installation of appropriate ladder safety devices for the entire length of fixed ladder climb.

4. Each employee who climb fixed ladders equipped with ladder safety devices shall use those devices properly and shall follow appropriate procedures for inspection and maintenance of those devices.

5. Each employee who routinely climbs fixed ladders shall undergo training and demonstrate the physical capability to safely perform the necessary climbs. These employees shall satisfy the "qualified climber" requirements in proposed 29 CFR 1910.32(b)(5) (proposed subpart D), as follows:

A. Qualified climbers shall be physically capable (demonstrated through observations of actual climbing activities or by a physical examination) of performing the duties which may be assigned to them;

B. Qualified climbers shall have successfully completed a training or apprenticeship program that covered hands-on training for the safe climbing of ladders or step bolts and shall be retrained as necessary to ensure the necessary skills are maintained;

C. The employer shall ensure through performance observations, and formal classroom or on-the-job training that the qualified climber has the skill to safely perform the climbing;

D. Qualified climbers shall have climbing duties as one of their routine work activities; and

E. Qualified climbers, when reaching their work position, shall be protected by an appropriate fall protection system.

6. All ladder safety devices that are currently installed on Gannett's fixed ladders less than 50 feet in length of climb or which ascend to heights less than 65 feet above grade shall be properly maintained and used by employees.

*Effective date:* This order shall become effective on March 1, 1991, and shall remain in effect unless otherwise modified or revoked in accordance with section 6(d) of the Occupational Safety and Health Act of 1970.

Signed at Washington, DC on this 25th day of February, 1991.

Gerard F. Scannell,  
Assistant Secretary of Labor.

[FR Doc. 91-4912 Filed 2-28-91; 8:45 am]

BILLING CODE 4510-26-M

#### MERIT SYSTEMS PROTECTION BOARD

##### Collection of Information Concerning Quality of Performance of Federal Procurement Specialists

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Notice of request for OMB approval of a collection of information under the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35 and 5 CFR part 1320.

**SUMMARY:** The U.S. Merit Systems Protection Board (MSPB) is seeking approval of OMB to collect information concerning the quality of work performed by persons working as procurement specialists for the Federal Government. As part of its study of the procurement work force, MSPB is seeking approval to collect information concerning the contracting process from businesses which currently provide contracted goods or services to the Government. The purpose of this survey is to obtain information relating to customer satisfaction with both the procurement process and the persons who work for the Government as procurement specialists. A total of 1500 businesses will be randomly selected to participate in the study. The information obtained from this survey will be included as part of an MSPB report to the President and Congress on the quality of the procurement work force. The information will also be used by the Office of Federal Procurement Policy of OMB to develop training plans and chart the future development of this field.

**DATES:** Comments on this approval should be received on or before April 2, 1991.

**ADDRESSES:** Send or deliver comments to:

Joseph Lackey, MSPB Desk Officer,  
Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., room 3235, Washington, DC 20503

and  
Office of Policy and Evaluation, U.S. Merit Systems Protection Board, 1120 Vermont Ave., NW., Washington, DC 20419.

**FOR FURTHER INFORMATION CONTACT:** Dr. John Crum, Office of Policy and Evaluation, Merit Systems Protection Board, 1120 Vermont Ave. NW., Washington, DC 20419, (202) 653-6066.



Dated: February 25, 1991  
**Robert E. Taylor,**  
*Clerk of the Board.*  
 [FR Doc. 91-4830 Filed 2-28-91; 8:45 am]  
 BILLING CODE 7400-01-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-18]

### NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.  
**ACTION:** Meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Aeronautical Facilities.  
**DATES:** March 26, 1991, 8:30 a.m. to 4 p.m.

**ADDRESSES:** National Aeronautics and Space Administration, Federal Building 10B, Room 468, 600 Independence Avenue, SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Mr. Martin Stein, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2706.

**SUPPLEMENTARY INFORMATION:** The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics, Exploration and Technology (OAET) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Aeronautical Facilities, chaired by Dr. Renzo L. Caporali, is composed of six members.

The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the team members and other participants).

*Type of Meeting:* Open.

#### Agenda

March 26, 1991

- 8:30 a.m.—Introduction and Plenary Session.
- 9:30 a.m.—Programmatic Requirements for Facilities Plans.
- 1 p.m.—Aeronautical Facilities Revitalization/Fiscal Year 92-97 Construction of Facilities Plan.
- 3 p.m.—Group Discussion.
- 4 p.m.—Adjourn.

Dated: February 25, 1991.  
**Philip D. Waller,**  
*Deputy Director Management Operations Office.*  
 [FR Doc. 91-4858 Filed 2-28-91; 8:45 am]  
 BILLING CODE 7510-01-M

[Notice 91-19]

### NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.  
**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration (NASA) announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee.

**DATES:** March 26, 1991, 8 a.m. to 4 p.m.

**ADDRESSES:** National Aeronautics and Space Administration, Federal Building 10B, room 625, 600 Independence Avenue, SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Ms. Catherine L. Smith, Office of Aeronautics, Exploration and Technology (OAET), National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2367.

**SUPPLEMENTARY INFORMATION:** The NAC Aeronautics Advisory Committee was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics, Exploration and Technology. The Committee, chaired by Mr. Phil M. Condit, is comprised of 17 members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the team members and other participants). It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the participants.

*Type of Meeting:* Open.

#### Agenda:

March 26, 1991

- 8 a.m.—Opening Remarks.
- 8:30 a.m.—Welcome.
- 8:45 a.m.—Aeronautics Strategy.
- 11 a.m.—NASA/Aviation Administration Cooperation Update.
- 12:30 p.m.—NASA/Department of Defense Update.
- 1:30 p.m.—Status of Current Ad Hoc Activities.
- 2 p.m.—Discussion of Future Ad Hoc Activities.
- 3 p.m.—Discussion of Issues and

Recommendations from January AAC/Aerospace Research and Technology Subcommittee Meeting.  
 4 p.m.—Adjourn.

Dated: February 25, 1991.  
**Philip D. Waller,**  
*Deputy Director, Management Operations Office.*  
 [FR Doc. 91-4859 Filed 2-28-91; 8:45 am]  
 BILLING CODE 7510-01-M

[Notice 91-20]

### NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Astrophysics Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.  
**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Astrophysics Subcommittee.

**DATES:** March 25, 1991, 9 a.m. to 4:15 p.m.

**ADDRESSES:** The National Aeronautics and Space Administration, 600 Independence Avenue, SW., room 226A, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lia LaPiana, Code SZ, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1544).

**SUPPLEMENTARY INFORMATION:** The Space Science and Applications Advisory Committee (SSAAC) consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Application programs. The Astrophysics Subcommittee provides advice to the Astrophysics Division and to the SSAAC on operation of the Astrophysics Program and on the formulation and implementation of the Astrophysics research strategy. The Subcommittee will meet to discuss the developments since the December 1990 Astrophysics meeting, the Final Report of the Astronomy and Astrophysics Survey Committee published by the National Academy of Sciences (Bahcall Report), and new initiatives. The Subcommittee is chaired by Dr. Irwin Shapiro and is composed of 28 members. The meeting will be open to the public up to the capacity of the room



(approximately 50 people including Subcommittee members). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

*Type of Meeting:* Open.

#### Agenda

Monday, March 25

- 9 a.m.—Introduction, Developments Since December 1990 Meeting.
- 10 a.m.—Community Perspectives on the Final Report of the Astronomy and Astrophysics Survey Committee (Bahcall Report).
- 11:15 a.m.—Astrophysics Division Perspective on the Bahcall Report.
- 1 p.m.—Strategic Discussion/New Initiatives.
- 4 p.m.—Discussion of Future Meeting Planning.
- 4:15 p.m.—Adjourn.

Dated: February 26, 1991.

Philip D. Waller,

Deputy Director, Management Operations Office.

[FR Doc. 91-4860 Filed 2-28-91; 8:45 am]

BILLING CODE 7510-01-M

#### NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

##### Meeting

**AGENCY:** National Commission on Acquired Immune Deficiency Syndrome.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Commission.

##### DATE AND TIME:

- March 11, 1991—2 p.m. to 5 p.m. (optional site visits)
- March 12, 1991—8:30 a.m. to 5 p.m.
- March 13, 1991—8:30 a.m. to 5 p.m.

**PLACE:** Park Hyatt Hotel, 800 N. Michigan Avenue, Chicago, Illinois 60611.

**TYPE OF MEETING:** Open.

**FOR FURTHER INFORMATION CONTACT:** Maureen Byrnes, Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., suite 815, Washington, DC 20006 (202) 254-5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

**AGENDA:** The Commission will discuss issues relating to pediatric HIV disease, HIV disease among adolescents, and

issues surrounding the HIV epidemic in Hispanic communities.

Interpreting services are available for deaf people. Please call our TDD number (202) 254-3816 to request services no later than March 6, 1991.

Maureen Byrnes,

Executive Director.

[FR Doc. 91-4845 Filed 2-28-91; 8:45 am]

BILLING CODE 6820-CN-M

#### NATIONAL SCIENCE FOUNDATION

##### Committee Management; Establishment

The Assistant Director for Education and Human Resources has determined that the establishment of the Special Emphasis Panel in Research Initiation and Improvement is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

**NAME OF COMMITTEE:** Special Emphasis Panel in Research Initiation and Improvement.

**PURPOSE:** To advise on the merit of special initiative proposals submitted to the Research Initiation and Improvement Division for financial support.

##### BALANCE MEMBERSHIP PLAN:

Membership will be selected on an "as needed" basis in response to specific proposals/sites to be reviewed. About 157 individual panelists will be used each year. Members will be selected for their demonstrated scientific and engineering expertise so as to represent a reasonable balance of capability in the various subfields of the proposals to be reviewed. Consideration will also be given to achieving geographic balance and the enhancing representation for women, minorities, younger and disabled scientists.

**RESPONSIBLE NSF OFFICIAL:** Dr. Joseph Danek, Director for Research Initiation and Improvement, room 1225, Phone 357-5052, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Dated: February 25, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-4843 Filed 2-28-91; 8:45 am]

BILLING CODE 7555-01-M

#### Special Emphasis Panel in Teacher Preparation and Enhancement; Meetings

The National Science Foundation announces the following meetings:

Site visit teams of the Special Emphasis Panel in Teacher Preparation and Enhancement will conduct meetings at the following locations.

Date	Place and Time
Mar. 5, 1991	Board of Regents Office, Baton Rouge, LA; 8-5
Mar. 5, 1991	Northeast Bell Building, Hartford, CT; 8-5
Mar. 5, 1991	Great Southern Hotel, Columbus, OH; 8-5
Mar. 5, 1991	Colonial Inn, Helena, MT; 8-5
Mar. 7, 1991	State Capitol Building, Pierre, SD; 8-5
Mar. 7, 1991	Georgia Power Building, Atlanta, GA; 8-5
Mar. 7, 1991	Texas A & M University, College Station, TX; 8-5
Mar. 12, 1991	Microelectronics Cent. of NC, Research Triangle Park; and NC State Administration Bldg., Raleigh, NC; 8-5
Mar. 12, 1991	Boston Museum of Science, Boston, MA; 8-5
Mar. 12, 1991	Florida Education Center, Tallahassee, FL; 8-5
Mar. 14, 1991	Hotel DuPont, Wilmington, DE; 8-5
Mar. 14, 1991	State Dept of Education, Providence, RI; 8-5
Mar. 14, 1991	University of Nebraska, Lincoln, NE; 8-5

*Type of Meeting:* Closed.

**Contact:** Mr. Charles R. Eilber, Program Director, Division of Teacher Preparation and Enhancement, room 504, National Science Foundation, Washington, DC 20550, Telephone: 202/357-7751.

**Purpose of Meeting:** To provide advice concerning support for Statewide Systemic Initiatives programs.

**AGENDA:** Review and evaluation of Statewide Systemic Initiatives proposals as part of the selection process of awards.

**REASONS FOR CLOSING:** The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b)(c), Government in the Sunshine Act.

**REASON FOR LATE NOTICE:** The difficulty of arranging for 13 different sites to be visited within a two week period, and finding 41 reviewers with national stature in these fields who also had these dates free to travel.



Dated: February 25, 1991.

M. Rebecca Winkler,  
Committee Management Officer.

[FR Doc 91-4842 Filed 2-28-91; 8:45 am]

BILLING CODE 7555-01-M

### Meeting: Cellular Biosciences Special Emphasis Panel

Name: Joint Meeting of Special Emphasis Panels in Cellular and Molecular Biosciences.

Date & time: March 18-19, 1991.

Place: National Science Foundation, 1800 G Street NW., Washington, DC 20550, Conference Room 1242.

Type of meeting: Closed.

Contact persons:

Dr. Eve Ida Barak, Division of Cellular Biosciences, room 321 (202) 357-7474.

Ms. Brenda Flam, Division of Molecular Biosciences, room 325 (202) 357-9400.

Minutes: May be obtained from contact person listed above.

Purpose: To provide advice and recommendations concerning research proposals submitted to the Divisions of Cellular and Molecular Biosciences for Research Planning Grants and Career Advancement Awards FY 1991 competition.

Agenda: Closed—To review and evaluate proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: February 25, 1991.

M. Rebecca Winkler,  
Committee Management Officer.

[FR Doc. 91-4844 Filed 2-28-91; 8:45 am]

BILLING CODE 7555-01-M

### NUCLEAR REGULATORY COMMISSION

Documents containing reporting or recordkeeping requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the OMB for review the following

proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: 10 CFR part 55.

3. The form number if applicable: N/A.

4. How often the collection is required: As necessary in order for NRC to meet its responsibilities to determine the eligibility of applicants for operators' licenses and perform a review of applications and reports for simulation facilities submitted to the NRC for approval.

5. Who will be required or asked to report: Licensees and applicants for nuclear power plants, and research and test reactors.

6. An estimate of the number of responses: 3,039.33 annually.

7. An estimate of the total number of hours needed to complete the requirement or request: 2,665.

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: 10 CFR part 55 of the NRC's regulations, "Operators' Licenses" specifies information and data to be provided by applicants and facility licensees so that the NRC may make determinations concerning the licensing of operators for nuclear power plants necessary to promote the health and safety of the public.

ADDRESSES: Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555.

FOR FURTHER INFORMATION: Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150-0018), Office of Information and Regulatory Affairs, NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by the telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda J. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 21st day of February 1991.

Patricia G. Norry,

Designated Senior, Official for Information Resources Management.

[FR Doc. 91-4885 Filed 2-28-91; 8:45 am]

BILLING CODE 7590-01-M

### Advisory Committee on Reactor Safeguards, Subcommittee on Improved Light Water Reactors:

The Subcommittee on Improved Light Water Reactors will hold a meeting on March 14 and 15, 1991, at EPRI, 3412 Hillview Avenue, Palo Alto, CA.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, March 14, 1991—8:30 a.m.

until the conclusion of business.

Friday, March 15, 1991—8:30 a.m. until the conclusion of business.

The Subcommittee will review NRC staff's Draft Safety Evaluation Reports corresponding to Chapters 6-13 of the EPRI-ALWR Requirements Document for the Evolutionary Designs and other related issues.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by member of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentation by and hold discussions with representatives of EPRI and the NRC staff regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Medhat El-Zeftawy (telephone 301/492-9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.



Dated: February 22, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91-4882 Filed 2-20-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 030-12688 and 030-09761;  
License Nos. 29-06760-07 and 29-06760-08; EA 90-061]

**Radiology-Ultrasound-Nuclear  
Consultants, PA. Freehold, NJ: Order  
Imposing a Civil Monetary Penalty**

**I**

Radiology-Ultrasound-Nuclear Consultants, PA. (Licensee) is the holder of byproduct material License Nos. 29-06760-07 and 29-06760-08 issued by the Nuclear Regulatory Commission (Commission or NRC) which authorizes the Licensee to possess and use byproduct material for both diagnostic and therapeutic procedures in accordance with the conditions specified therein.

**II**

An inspection of the Licensee's activities was conducted on March 14, 1990. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated June 13, 1990. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice in a letter dated "June 21-July 10, 1990." In its response, the Licensee: (1) Admitted Violation D (but asserted Violation D is irrelevant); (2) denied Violation A; (3) denied Violation C, in that the Licensee contended that it had recorded daily wipe tests; and (4) neither admitted nor denied Violations B, E.1, E.2, F, G, and H. The Licensee also requested cancellation of the civil penalty.

**III**

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated in the Notice, with the exception of Violation E.2, which needed clarification. The NRC staff, as set forth in the appendix to this Order, has determined that: (1) The Licensee violated the NRC

requirements associated with Violation E.2 as stated in the Notice; (2) Violation E.2 should be amended for clarification of the violation; and (3) the amendment of Violation E.2 should have no effect on the civil penalty. In addition, as set forth in the appendix to this Order, the NRC staff has determined that cancellation of the civil penalty is not warranted and that the penalty proposed for the violations designated in the Notice should be imposed.

**IV**

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The Licensee pay a civil penalty in the amount of \$1,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as described in Violations A, B, C, E.1, F, G, and H set forth in the Notice referenced in section II above and Violation E.2, as amended and as set forth in the appendix to this Order referenced in section III above, which the Licensee either denied, or did not admit or deny, and

(b) Whether, on the basis of the violations referred to in section V.(a) above, and Violation D set forth in the

Notice, which the Licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland, this 22nd day of February 1991.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear  
Materials Safety, Safeguards, and Operations  
Support.

**Appendix**

*Evaluation and Conclusion*

On June 13, 1990, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Radiology-Ultrasound-Nuclear Consultants, PA (G. Anthony Doener, M.D.) (Licensee) responded to the Notice by letter dated June 21-July 10, 1990. In its response, the Licensee: (1) Admitted Violation D (but asserted Violation D is irrelevant); (2) denied Violations A and C; and (3) neither admitted nor denied Violations B, E.1, E.2, F, G, and H. The Licensee also requested cancellation of the civil penalty. The NRC's evaluation and conclusion regarding the Licensee's requests are as follows:

*Restatement of the Violations*

A. 10 CFR 35.615(d)(3) requires that the permanent radiation monitor installed in each teletherapy room be checked with a dedicated check source for proper operation each day before the teletherapy unit is used for treatment of patients.

Contrary to the above, on those days prior to March 14, 1990, that the teletherapy unit was used for treatment of patients, the permanent radiation monitor in the teletherapy room was not checked with a dedicated check source for proper operation before the teletherapy unit was used for treatment.

B. 10 CFR 35.634(f) requires, in part, that a licensee's retained record of each spot-check required by 10 CFR 35.634 (a) and (d) must include, among other things, the difference between the anticipated output and the measured output of the teletherapy unit.

Contrary to the above, as of March 14, 1990, the licensee's retained spot check records did not include the difference between the anticipated output and the measured output of the teletherapy unit.

C. 10 CFR 35.70(h) requires, in part, that a licensee retain for three years a record of each survey. 10 CFR 35.70(a) requires, in part, that a licensee survey at the end of each day of use all areas where radiopharmaceuticals are routinely prepared for use or administered.

Contrary to the above, as of March 14, 1990, the licensee did not retain records of daily surveys of areas where radiopharmaceuticals were routinely prepared for use or administered.

D. 10 CFR 35.632(a)(2)(i) requires that a licensee perform full calibration measurements on each teletherapy unit whenever the spot-check measurements indicate that the output differs by more than



5 percent from the output obtained at the last full calibration, corrected mathematically for radioactive decay.

Contrary to the above, the licensee did not perform full calibration measurements when spot check measurements performed by the licensee in November 1986, in January, February, March, May and June 1987, and in March 1988, indicated that the teletherapy unit output differed by more than 5 percent from the output obtained at the last full calibration.

E. 10 CFR 35.21(a) requires that the licensee appoint a Radiation Safety Officer responsible for implementing the radiation safety program. The licensee, through the Radiation Safety Officer, is required to ensure that radiation safety activities are performed in accordance with approved procedures. 10 CFR 35.21(b)(2) requires, in part, that the Radiation Safety Officer (RSO) establish and implement written policy and procedures for using byproduct material safely and performing checks of survey instruments and other safety equipment.

For using byproduct materials safely and performing checks of survey instruments and other safety equipment, the Licensee's Radiation Safety Officer established the procedures in NRC Regulatory Guide 10.8, Revision 2, appendix C and D, which are required by Condition 13 of License No. 29-06760-08 to be met.

Appendix C requires, in part, that the measurements obtained during the dose calibrator linearity test be plotted and that the percent deviation be determined. Appendix D requires, in part, that all individuals who are occupationally exposed to ionizing photon radiation on a regular basis be issued a film or TLD whole body monitor and that individuals who, on a regular basis handle radioactive material that emits ionizing photon radiation, be issued a film or TLD finger monitor to be processed on a monthly basis.

Contrary to the above:

1. Between January 1987 and February 1988, the dose calibrator linearity test results did not include either a plot of the measurements or a determination of the percent deviation.

2. As of March 14, 1990, the RSO neither wore the issued whole body monitor while working with radioactive material on a regular basis, nor was he issued a finger monitor for use when handling radioactive material.

F. 10 CFR 35.50(b)(3) requires, in part, that the Licensee test the dose calibrator for linearity at least quarterly.

Contrary to the above, the Licensee did not test the dose calibrator for linearity during the last three quarters of 1988, nor at any time during 1989.

This is a repeat violation.

G. 10 CFR 35.51(a)(3) and (c) require that a licensee conspicuously note on each survey instrument the apparent exposure rate from a dedicated check source as determined at the time and date of the calibration and check each survey instrument for proper operation with the dedicated check source each day of use.

Contrary to the above, as of March 14, 1990, the licensee did not conspicuously note

on the survey instrument the apparent exposure rate from a dedicated check source as determined at the time and date of the calibration, and did not check each survey instrument for proper operation with a dedicated check source each day of use.

H. 10 CFR 35.92(b) requires that a licensee retain a record of each disposal of byproduct material held for decay-in-storage as permitted under 10 CFR 35.92(a) for three years. The record must include, among other things, the date on which the byproduct material was placed in storage, the radionuclides disposed, and the background dose rate.

Contrary to the above, as of March 14, 1990, the licensee's retained records of disposal of byproduct material held for decay-in-storage did not include the date on which the byproduct material was placed in storage; the radionuclides disposed; or the background dose rate.

These violations have been classified in the aggregate as a Severity Level III problem. (Supplement VI)

Civil Penalty—\$1,000—(assessed equally among the 9 violations)

#### Summary of Licensee's Response

##### Violation A

The licensee denies Violation A. The Licensee asserts that the permanent radiation monitor in the teletherapy room is checked each day as required, and is also checked before each radiation treatment using the cobalt unit as a dedicated check source. The Licensee states that a special dedicated check source is not used because this would result in unnecessary exposure to the radiation worker. The Licensee also states that no written records of the daily routine checks are kept because the checks are considered a "normal routine."

#### NRC Evaluation of Licensee's Response

##### Violation A

The Licensee is required to check the permanent radiation monitor in the teletherapy room with the cobalt unit each day before the teletherapy unit is used for treatment of patients. However, on the day of the inspection, the NRC inspector observed the Licensee treat the day's first patient with the teletherapy unit without checking the radiation monitor with the cobalt unit or any other dedicated check source. Further, when questioned by the inspector, the Radiation Safety Officer stated that he does not check the monitor until he begins the treatment. The regulation clearly requires that the monitor be checked before the teletherapy unit is used for treatment of a patient. Therefore, the NRC concludes that the violation occurred as stated.

#### Summary of Licensee's Response

##### Violation B

The Licensee asserts that the anticipated output and the measured output of the teletherapy unit are recorded, and that the difference between the two measurements is self-explanatory.

#### NRC Evaluation of Licensee's Response

##### Violation B

The NRC agrees that the Licensee's records specified the measured output and the anticipated output of the teletherapy unit. However, these records did not include the difference between the two output values expressed as a percentage of the anticipated output as required by 10 CFR 35.634(a)(6). Therefore, the NRC concludes that the violation occurred as stated.

As a separate matter, the NRC acknowledges that, as indicated in 10 CFR 35.634, "Periodic spot-checks," item (a)(6) contains a typographical error. This item references the measured output required by paragraph (a)(5), not paragraph (b)(5) as stated in the regulation. A correction of this typographical error will be incorporated into the NRC's next revision of part 35.

#### Summary of Licensee's Response

##### Violation C

The Licensee denies Violation C. The Licensee states that areas where radiopharmaceuticals are routinely prepared for use and administration are continuously surveyed by a Geiger instrument equipped with an acoustic alarm. The Licensee asserts that the acoustic alarm is better "perceived" than a visual reading of a monitoring instrument which might go unnoticed. Therefore, the Licensee maintains that any excess radioactivity is readily monitored. The Licensee also states that the daily wipe tests of areas where radiopharmaceuticals are used is recorded.

#### NRC Evaluation of Licensee's Response

##### Violation C

Continual acoustical monitoring may be superior to a visual reading from a survey instrument for a given purpose. Monitoring with a Geiger instrument, however, does not by itself satisfy the requirements of 10 CFR Part 30.70(h) to retain records of the results of certain surveys. While the NRC agrees that the Licensee performed and documented wipe tests beyond those required by 10 CFR 35.70(e), those tests detect removable surface contamination, and do not measure the ambient radiation exposure rates that 10 CFR Part 35.70(h) requires to be recorded. The Licensee did not retain records of surveys required by 10 CFR part 35.70(a).

The Licensee did not document these surveys. Therefore, the NRC concludes the violation occurred as stated.

#### Summary of Licensee's Response

##### Violation D

The Licensee admits that spot check measurements of the teletherapy unit indicated that the teletherapy unit output differed by more than 5% from the output obtained at the last full calibration. However, the Licensee asserts this fact is irrelevant because: (1) The measuring instruments have an inaccuracy of more than 5%; and (2) Cobalt-60 decay is at a constant rate. Therefore, the Licensee asserts the required tests do not represent a test of the cobalt unit, but only represent a test of the measuring



instrument which has no significance concerning the output of the cobalt unit. For these reasons, the Licensee concludes that spot check measurements exceeding  $\pm 5\%$  do not justify the expense it would incur to perform a full calibration of the cobalt unit and suggests that the NRC rescind the requirement for recalibration of the teletherapy unit under these circumstances since it constitutes an unnecessary burden on the workers and patients.

#### *NRC Evaluation of Licensee's Response*

##### *Violation D*

The Licensee admits the violation. As for the Licensee's contention that the violation is irrelevant to safety, the difference between the measured output and the anticipated output may indicate problems with the teletherapy unit such as malfunction of the timer, the collimator, or the source drive mechanism. The measured dose and doses administered to patients are not solely dependent on the decay of the source. In addition, the formula used to calculate the output dose from a spot check measurement contains a correction factor to compensate for any measuring instrument inaccuracy. Accordingly, the NRC staff concludes that Violation D is a significant violation.

#### *Summary of Licensee's Response*

##### *Violation E*

The Licensee did not admit or deny Violation E.1 in its response.

With respect to Violation E.2, the Licensee neither admits nor denies the violation. The Licensee asserts that the RSO did in fact wear a whole body monitor while working with radioactive material and that he exhibited the monitor to the inspector at the time of the inspection. The Licensee did acknowledge that the RSO had lost his finger monitor. The Licensee also points out that the RSO always wore a pocket dosimeter which is checked with a cesium source.

#### *NRC Evaluation of Licensee's Response*

##### *Violation E*

The Licensee did not admit or deny Violation E.1. The Licensee enclosed a letter concerning a linearity test of the cobalt unit timer, but the violation involves linearity test results for the dose calibrator, which is used for administering radiopharmaceuticals to patients. Therefore, based on the inspector's review during the inspection, the NRC concludes that the violation occurred as stated.

With respect to Violation E.2, the NRC has clarified the citation, upon reconsideration of the matter based on the Licensee's response. The NRC acknowledges that the RSO wore a whole body badge while working with radioactive material. However, the particular badge worn by the RSO is assigned from a local hospital and is not a whole body badge assigned to monitor exposure received exclusively while working at the Licensee's private practice facility. Under these circumstances, if an exposure were to occur, the Licensee would not be able to immediately ascertain from which facility, and under what conditions, the exposure occurred. In addition, the RSO admitted that

he had lost his finger monitor and had not been wearing it. Under such conditions (the loss of the finger monitor) activities should not have continued without the finger monitor having been replaced. Therefore, it is clear from the Licensee's response that the RSO did not use a whole body badge issued by the Licensee nor did he use a finger badge issued by the Licensee. Accordingly, the Licensee was in violation of 10 CFR 35.21 (a) and (b) as set forth in the amended Violation E.2 and restated below.

#### *Restatement of Violation E.2, as Amended*

E.2 10 CFR 35.21(a) requires that the licensee appoint a Radiation Safety Officer responsible for implementing the radiation safety program. The licensee, through the Radiation Safety Officer, is required to ensure that radiation safety activities are performed in accordance with approved procedures. 10 CFR 35.21(b)(2) requires, in part, that the Radiation Safety Officer (RSO) establish and implement written policy and procedures for using byproduct material safely and performing checks of survey instruments and other safety equipment.

For using byproduct materials safely and performing checks of survey instruments and other safety equipment, the licensee's Radiation Safety Officer established procedures in accordance with NRC Regulatory Guide 10.8, Revision 2, (Reg Guide 10.8) Appendix D, which is required by Condition 13 of License No. 29-06780-08 to be met.

Appendix D of Reg Guide 10.8 requires, in part, that all individuals who are occupationally exposed to ionizing photon radiation on a regular basis be issued a film or TLD whole body monitor and that individuals who, on a regular basis handle radioactive material that emits ionizing photon radiation, be issued a film or TLD finger monitor to be processed on a monthly basis.

Contrary to the above as of March 14, 1990, the RSO neither wore a whole body monitor issued by the Licensee while working with radioactive material on a regular basis, nor did he wear a finger monitor issued by the Licensee for use when handling radioactive material.

#### *Summary of Licensee's Response*

##### *Violation F*

The Licensee did not admit or deny Violation F, but argued that, because of its practices for administering radiopharmaceuticals, it has a wide margin for error in measuring dose activity before any error would cause the Licensee to give any excessive dose to its patients.

#### *NRC Evaluation of Licensee's Response*

##### *Violation F*

The Licensee did not admit or deny Violation F. The staff finds no validity in the Licensee's argument that, because of its practices for administering radiopharmaceuticals, it has a wide margin for error in measuring dose activity before the error would cause the Licensee to give any excessive dose to its patients. The Licensee had not performed a linearity test of

its dose calibrator in over one year. This test is of safety significance because it is one of the quality assurance tests that assures that the dose given is within the parameters set by the regulations of the NRC. Dose calibrator quality assurance testing is also supported by national equipment standards of the American National Standards Institute, safety recommendations of the National Council on Radiation Protection and Measurements, and accepted practice of the American College of Nuclear Physicians. Without such testing, the Licensee cannot assure its dose calibrator response is within the appropriate range over the activity ranges it uses. Without such quality assurance testing, a failure of the dose calibrator would not be detected and could contribute to a misadministration. Therefore, based on the inspector's observation during the inspection, the NRC concludes that the violation occurred as stated and is safety significant.

#### *Summary of Licensee's Response*

##### *Violation G*

The Licensee did not specifically admit or deny Violation G. The Licensee states that it now has labeled its radiation survey meter and has indicated the apparent exposure rate from a dedicated source of cesium-137. The Licensee also states that it has used dedicated check sources, either Cesium-137 or Radium 227 regularly.

#### *NRC Evaluation of Licensee's Response*

##### *Violation G*

The Licensee did not admit or deny Violation G. The Licensee stated it now has indicated the apparent exposure rate from a dedicated cesium-137 source on the label on the radiation survey instrument. The Licensee also states that it has regularly used its dedicated check sources. The NRC acknowledges that during the inspection the Licensee stated it performed a check of its survey instrument for proper operation with a dedicated check source each day of use. However, according to the Licensee's consultant, the Licensee did not supply a dedicated check source to the consultant at the time that the consultant performed the calibration of the Licensee's survey instruments. An apparent exposure rate from a dedicated check source was not determined. Since the exposure rate from a dedicated check source was not determined at the time of instrument calibration, the daily checks by the Licensee did not fulfill the requirements of 10 CFR 35.51(a)(3) and (c) as stated in Violation G. Therefore, the NRC concludes that the violation occurred as stated.

#### *Summary of Licensee's Response*

##### *Violation H*

The Licensee did not specifically admit or deny Violation H. The Licensee states it "checks" its waste (consisting of alcohol pads) with a crystal probe after every injection before it is put into storage and that it has never encountered any activity in the waste.



*NRC Evaluation of Licensee's Response**Violation H*

Although the Licensee asserts that its surveys of all waste after use indicated that the waste material was non-radioactive, the Licensee treated the material as byproduct material held for decay-in-storage (radioactive waste). In addition, contrary to the Licensee's assertion, it has been the NRC's experience that alcohol pads (held over injection sites) are radioactively contaminated and should be treated as radioactive waste. Because the Licensee treats its waste material (alcohol pads) as radioactive waste, it is required to maintain waste disposal records which reflect the information required by 10 CFR 35.92(b). Specifically, the Licensee's waste disposal records did not contain: (1) The date on which the byproduct material was placed in storage; (2) the radionuclides disposed; and (3) the background dose rates. Therefore, the NRC concludes that violation occurred as stated.

*Summary of Licensee's Request for Mitigation*

The Licensee requested cancellation of the civil penalty; however, no basis for this request was provided.

*NRC Conclusion*

The Licensee provided information which the NRC considered in amending Violation E.2 to clarify the citation. However, it is clear from the Licensee's response that it was in violation of Violation E.2, as amended and restated in this appendix. Therefore, for the reasons set forth above, the NRC has concluded that the violations occurred as stated in the Notice of Violation and as amended and restated in this appendix. No basis for mitigation of the civil penalty was provided. As a result, the NRC finds that mitigation of the civil penalty is not warranted. Accordingly, the NRC concludes that a civil penalty in the amount of \$1,000 should be imposed for the violations set forth in the Notice.

[FR Doc. 91-4883 Filed 2-28-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-312]

**Sacramento Municipal Utility District  
(Rancho Seco Nuclear Generating  
Station); Exemption**

I

Sacramento Municipal Utility District (SMUD or the licensee) is the holder of Facility Operating License No. DPR-54, which authorizes operation of the Rancho Seco Nuclear Generating Station (the facility) at steady-state reactor power levels not in excess of 2772 megawatts thermal. The licensee states, among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility

consists of a pressurized water reactor located at the licensee's site in Sacramento, California. The facility is currently shut down and defueled.

In a letter dated September 20, 1990, as amended in a letter dated December 20, 1990, the licensee submitted a request for exemption from certain provisions of emergency preparedness as required by 10 CFR 50.54(q).

II

Section 50.54(q) of 10 CFR part 50 requires a licensee authorized to possess and operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of 10 CFR 50.47(b) and the requirements of appendix E to 10 CFR part 50. Section 50.47(b) provides that both offsite and onsite emergency plans must meet the standards specified in subparagraphs (1) through (16) of 10 CFR 50.47(b). With respect to offsite emergency preparedness, SMUD states that an exemption from 10 CFR 50.54(q) is necessary because, with the proposed cessation of offsite response capability for Rancho Seco, SMUD will no longer meet the standards for offsite preparedness that are listed in 10 CFR 50.47(b) and in appendix E to 10 CFR part 50. In particular, SMUD will not meet the standards for offsite preparedness because under the proposed Change 4 of the Rancho Seco Emergency Plan, "Long Term Defueled Condition" (referred to as the Emergency Plan (EP) in this document), the Emergency Operations Facility and the Emergency News Center will be eliminated, and the Emergency Response Organization (ERO) staffing for offsite support by SMUD, coordination with Amador and San Joaquin Counties, and SMUD's maintenance of systems for alerting members of the public will also be deleted from the plan.

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. Further, 10 CFR 50.12(a)(2) provides that the Commission will not consider granting an exemption unless special circumstances are present. At least two of the special circumstances listed under 10 CFR 50.12(a)(2) apply to Rancho Seco's situation:

(ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

(iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

III

By letter dated September 20, 1990, as amended by letter dated December 20, 1990, the licensee requested an exemption from the emergency preparedness requirements of 10 CFR 50.54(q) based on the facility's shutdown and defueled condition. Rancho Seco was shut down on June 7, 1989. The licensee indicated that the potential risk to the public was significantly reduced and the range of credible accidents and accident consequences were limited for a shutdown and defueled Rancho Seco. The worst case accident for this facility is the dropping of a loaded spent fuel shipping cask.

The NRC staff has independently calculated the offsite dose resulting from a fuel handling accident using the assumptions and parameters in the standard review plan, the Updated Safety Analysis Report (USAR) and the licensee's submittal. The NRC staff's analysis indicated that at 100 meters, which is the Protected Area boundary and proposed EPZ boundary, the two hour whole body gamma dose and thyroid dose would be  $2.20 \times 10^{-3}$  mrem respectively. The licensee's two-hour calculated doses at 100 meters were 13.1 mrem and  $2.7 \times 10^{-4}$  mrem for whole body and for the thyroid, respectively. These values are a small fraction of the Environmental Protection Agency's (EPA) Protective Action Guidelines of one to five rem whole body gamma dose from exposure to airborne radioactive materials, and five to twenty-five rem thyroid dose from inhalation of airborne radioactive material. Under the general guidelines defining emergency classifications in NUREG-0654/FEMA-REP-1, Revision 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Procedures in Support of Nuclear Power Plants," dated November 1980, as well as the nature of the accident, the facility would not be in an emergency situation in which the result would be classified greater than an Alert. Under these circumstances, the staff believes that the offsite emergency response plan is not required. The staff took this finding into consideration while reviewing the proposed EP based on the acceptance criteria included in the planning standards of 10 CFR 50.47(b), and NUREG-0654.



The NRC staff has reviewed the EP, based on the acceptance criteria included in the planning standards of 10 CFR 50.47(b), the requirements of appendix E to 10 CFR part 50, and the guidance criteria of NUREG-0654. The NRC staff also reviewed the EP based on the requirements of 10 CFR 50.47(d) for a license authorizing only fuel loading and low power testing. The requirements of 10 CFR 50.47(d) address the lower risk associated with low power operation and are generally appropriate for reviewing the offsite aspects of the EP.

Based on this review, the Commission has concluded that the Rancho Seco EP provides an acceptable emergency preparedness plan for Rancho Seco in its non-operating and defueled condition, and the plan provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at Rancho Seco.

The licensee's request for exemption, based on the standards set forth in 10 CFR 50.12, is reasonable in light of the highly reduced offsite radiological risk associated with Rancho Seco's shutdown and defueled condition. The requested exemption, is (1) Authorized by law, is consistent with the common defense and security, and will not present an undue risk to the public health and safety, and (2) presents special circumstances.

#### IV

Regarding the existence of special circumstances which justify the exemption, 10 CFR 50.12(a)(2)(ii) applies to Rancho Seco's situation. For operating nuclear plants, emergency planning is essential to safety and the NRC's emergency planning regulations exist to ensure that adequate protective measures can and will be taken to protect the public health safety in the event of a radiological emergency. The Commission concurs in SMUD's analysis that no credible accident can occur that would require emergency preparedness actions offsite and thus adversely impact public health and safety. Considering the defueled condition at Rancho Seco, requiring SMUD to continue to meet the full range of NRC's emergency planning regulations is not necessary in order to achieve the underlying purpose of 10 CFR 50.54(q). With the level of emergency preparedness provided by the EP, SMUD will be fully capable of responding adequately to the spectrum of credible accidents that could occur at Rancho Seco in its defueled condition.

Section 50.12(a)(2)(iii) also is applicable in these circumstances. The

current regulations governing the requirements for the emergency response program do not contemplate plants that are shut down and defueled. For plants in this situation, compliance with these regulations presents an unwarranted hardship. SMUD must spend significant resources and effort to maintain the current level of onsite and offsite emergency preparedness to respond to accident scenarios that can only occur at an operating plant and cannot credibly occur at Rancho Seco in the shutdown and defueled state. These resources include facilities, support equipment, as well as personnel training, and annual exercises and drills. By operating a smaller emergency response program, limited to onsite emergency preparedness, SMUD will reduce its costs significantly without impacting safety.

Without the exemption, SMUD must carry significantly higher costs than other plants that have received relief similar to that requested by SMUD. With an exemption, SMUD would be excused from those costs associated with compliance to inapplicable or unnecessary requirements of the regulation. Thus, continuing the current EP program, without the exemption, would constitute an undue hardship on the licensee.

#### V

For these reasons, the Commission has determined that, pursuant to 10 CFR 50.12, (1) The exemption requested by SMUD's letter dated September 20, 1990, as amended December 20, 1990, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and (2) special circumstances are present as described above.

Accordingly, the Commission hereby grants the following exemption:

The Rancho Seco Nuclear Generating Station is exempt from the requirements of 10 CFR 50.54(q) in regard to offsite emergency response for emergency preparedness, provided that (1) The reactor is shut down and defueled, and (2) the Rancho Seco Nuclear Emergency Plan, "Long Term Defueled Condition" is implemented.

This Exemption will remain in effect unless and until revoked by the Commission.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (56 FR 7421, dated February 22, 1991).

This exemption is effective upon issuance. For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 22d day of February 1991.

Dennis M. Crutchfield,

Director, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91-4884 Filed 2-28-91; 8:45 am]

BILLING CODE 7590-01-M

## NUCLEAR WASTE TECHNICAL REVIEW BOARD

### Meeting

Pursuant to the Nuclear Waste Technical Review Board's (Board) authority under section 5051 of Public Law 100-203 of the Nuclear Waste Policy Amendments Act of 1987, the Board's Panels on Structural Geology & Geoengineering and Quality Assurance will hold a joint meeting on March 26, 1991. Then, on March 27, 1991, the Quality Assurance Panel will hold its own meeting. Both meetings will be held at the Adolphus Hotel, Sam Rayburn Room, 1321 Commerce, Dallas, Texas 75202; (214) 742-8200. The March 26 meeting will run from 8:30 a.m. to 5 p.m., and the March 27 meeting will run from 10:30 a.m. to 4 p.m.

On March 26, the panels have invited representatives of the Department of Energy (DOE) and its contractors to discuss the preliminary design of the exploratory shaft facility (ESF). Panel members are interested in reviewing the quality assurance (QA) controls that will be applied to the design of the ESF from its conceptual phase through implementation. Discussions will focus on the process for assuring that the people designing the shaft are adequately qualified and that adequate verification and documentation of all phases of the design process will take place. During the morning session, the DOE will provide an overview of the development of the ESF requirements document and the design control process. A discussion of the QA criteria applicable to the design process will follow. At the afternoon session, representatives from Sandia National Laboratories and Raytheon, a private corporation, will discuss technical input to the design and control aspects of the process, respectively. A representative from the Yucca Mountain Project Office also will comment on the project office's QA overview of the design process.

On March 27, representatives of the DOE will brief QA panel members on three aspects of the DOE QA process. First, they will update panel members on the progress made in remedying a number of QA implementation problems



that were identified at the last QA Panel meeting in November 1990.

Next, panel members will hear from DOE staff on a specific component of the QA process called "grading." Grading refers to the process of determining whether an activity should be subjected to the QA requirements and if so, the number and kind of QA criteria that should be applied to it. DOE staff will give a briefing on the details involved in grading.

Last, panel members will be briefed by a member of the newly-created technical advisory committee, should that committee be established by March 27, 1990. DOE's QA division in the waste management program is creating the committee at the recommendation of researchers in the site-characterization program to address issues of concern to them. It will be staffed from, among other organizations, the national laboratories.

The public is welcome to attend the meeting as observers. Transcripts of the meeting will be available on a library-loan basis from Ms. Victoria Reich, Board librarian, beginning April 22, 1991.

For further information, contact Ms. Paula N. Alford, Director, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209; (703) 235-4473.

Dated: February 26, 1991.

Dennis G. Condie,

Acting Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 91-4940 Filed 2-28-91; 8:45 am]

BILLING CODE 6820-AM-M

## OFFICE OF PERSONNEL MANAGEMENT

### Pay-for-Performance Labor-Management Committee; Meeting

The Office of Personnel Management announces the following meeting:

*Name:* Pay-for-Performance Labor-Management Committee.

*Date and Time:* March 18, 1991, 2 p.m. to 5 p.m.

*Place:* Room 1350, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415-0001.

*Type of Meeting:* Open.

*Point of Contact:* Ms. Doris Hausser, Chief of the Performance Management Division, Room 7454, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415-0001.

*Purpose of Meeting:* To consider ways to strengthen the linkage between the performance of General Schedule employees and their pay.

*Agenda:* Introduction; committee organization and administration; public input; closing.

*Supplementary Information:* Thirty minutes will be provided for the public input portion of the meeting, with each individual's or organization's comments limited to five minutes or less, depending on the number who wish to speak. In addition, written comments will be accepted before the meeting date or after the meeting, and should be submitted to the point of contact identified above.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91-4941 Filed 2-28-91; 8:45 am]

BILLING CODE 6325-01-M

## OFFICER OF PERSONNEL MANAGEMENT

### Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, April 11, 1991.

Thursday, May 2, 1991.

Thursday, May 16, 1991.

Thursday, June 13, 1991.

Thursday, June 27, 1991.

The meetings will start at 10:45 a.m. and will be held in room 5A06A, Office of Personnel Management Building, 1900 E Street, NW, Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt

substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 522b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 606-1500.

Dated: February 22, 1991.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate, Advisory Committee.

[FR Doc. 91-4797 Filed 2-28-91; 8:45 am]

BILLING CODE 6325-01-M

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### President's Council of Advisors on Science and Technology (PCAST)

The President's Council of Advisors on Science and Technology will meet on March 7-8, 1991. The meeting will begin at 9 a.m. in the Conference Room, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC.

The purpose of the Council is to advise the President on matters involving science and technology.

#### Proposed Agenda

1. Briefing of the Council on the current activities of the Office of Science and Technology Policy.
2. Briefing of the Council on current federal activities and policies in science and technology.
3. Discussion of progress of working group panels.
4. Discussion of composition of future working groups.



Portions of the March 7-8 sessions will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of materials that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c) (1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate discussion of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(c)(6).

Because of the security requirements, persons wishing to attend the open portion of the meeting should contact Ms. Sally Sherman (202) 395-3902, prior to 3 p.m. on March 6, 1991. Ms. Sherman is also available to provide specific information regarding time, place and agenda.

Dated: February 18, 1991.

Ms. Damar W. Hawkins,  
Executive Assistant, Office of Science and  
Technology Policy.

[FR Doc. 91-4803 Filed 2-28-91; 8:45 am]

BILLING CODE 3710-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-18015; 812-7652]

### Merrill Lynch Short-Term Global Income Fund, Inc., et al.; Application

February 22, 1991.

**AGENCY:** Securities and Exchange  
Commission ("SEC" or "Commission").

**ACTION:** Notice of application for  
exemption under the Investment  
Company Act of 1940 ("1940 Act").

**APPLICANTS:** Merrill Lynch Short-Term  
Global Income Fund, Inc. ("Short-Term  
Global") and each open-end  
management investment company to be  
established, advised, or managed  
subsequent to December 13, 1990 by  
Merrill Lynch Asset Management, Inc.  
("MLAM") or Fund Asset Management,  
Inc. ("FAMI") or to be distributed by

Merrill Lynch Funds Distributor, Inc. (all  
of the latter investment companies being  
referred to collectively, as the "New  
Funds" and, together with Short-Term  
Global, as the "Funds"), MLAM and  
FAMI (together, the "Advisers"), and  
Merrill Lynch Funds Distributor, Inc.  
(the "Distributor").

#### RELEVANT 1940 ACT SECTIONS:

Exemption requested under section 6(c)  
from the provisions of sections 18(f),  
18(g), and 18(i) of the 1940 Act.

**SUMMARY OF APPLICATION:** Applicants  
request an order to amend a prior order,  
Merrill Lynch California Municipal  
Series Trust, et al., Investment Company  
Act Release No. 16535 (August 23, 1988)  
(the "Prior Order"), which granted an  
exemption from sections 18(f), 18(g), and  
18(i) to permit certain open-end  
management investment companies to  
sell two classes of securities. The  
requested relief would permit each Fund  
to sell its Class A shares subject to an  
account maintenance fee (the "Account  
Maintenance Fee") that would be paid  
to the Distributor.

**FILING DATE:** The application was filed  
on December 13, 1990 and an  
amendment was filed on February 8,  
1991.

#### HEARING OR NOTIFICATION OF HEARING:

An order granting the application will be  
issued unless the SEC orders a hearing.  
Interested persons may request a  
hearing by writing to the SEC's  
Secretary and serving applicants with a  
copy of the request, personally or by  
mail. Hearing requests should be  
received by the SEC by 5:30 p.m. on  
March 20, 1991, and should be  
accompanied by proof of service on the  
applicants, in the form of an affidavit or,  
for lawyers, a certificate of service.  
Hearing requests should state the nature  
of the writer's interest, the reason for  
the request, and the issues contested.  
Persons who wish to be notified of a  
hearing may request notification by  
writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th  
Street, NW., Washington, DC 20549.  
Applicants, Box 9011, Princeton, New  
Jersey 08543-9011.

#### FOR FURTHER INFORMATION CONTACT:

Robert B. Carroll, Staff Attorney, at (202)  
272-3043, or Jeremy N. Rubenstein,  
Branch Chief, at (202) 272-3023 (Division  
of Investment Management, Office of  
Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The  
following is a summary of the  
application. The complete application  
may be obtained for a fee at the SEC's  
Public Reference Branch.

#### Applicant's Representations:

1. Each Fund will be an open-end  
management investment company  
registered under the 1940 Act and will  
enter into an investment advisory or  
management agreement with one of the  
Advisers and a distribution agreement  
with the Distributor pursuant to which  
the Distributor will act as principal  
underwriter for the Fund.

2. Pursuant to the Prior Order, the  
Advisers and the Distributor have  
established a Dual Distribution System  
which enables each Fund and the other  
open-end investment companies  
operating pursuant to the Prior Order  
and advised or managed by MLAM or  
FAMI or distributed by the Distributor  
prior to December 13, 1990 (the "Existing  
Funds") to offer investors the option of  
purchasing (a) Class A shares subject to  
a front-end sales load (the "Front-End  
Load Option") or (b) Class B shares  
subject to a contingent deferred sales  
charge ("CDSC") and a distribution plan  
adopted pursuant to rule 12b-1 under the  
1940 Act (the "Deferred Option"). Each  
of the two classes of shares represents  
interests in the same portfolio of  
investments of a Fund, and is identical  
in all respects with the other class,  
except that Class B shares bear the  
expenses of the deferred sales  
arrangements, any incremental transfer  
agency costs resulting from such sales  
arrangements, and any other  
incremental expenses subsequently  
identified that should be properly  
allocated to one class (which must be  
approved by the Commission pursuant  
to an amended order). In addition, the  
Class B shares have exclusive voting  
rights with respect to the rule 12b-1 plan  
to which they are subject. Also, Class A  
shares and Class B shares have different  
exchange privileges.

3. The Dual Distribution System  
enables an investor to choose the  
method of purchasing shares that is  
most beneficial given the amount of his  
purchase, the length of time he expects  
to hold his shares, and other relevant  
circumstances. For example, an investor  
that qualifies for a significant discount  
on the front-end sales load, such as a  
pension or other retirement plan, may  
determine that the Front-End Load  
Option is preferable to payment of an  
ongoing distribution fee. Conversely, an  
investor that does not qualify for a  
discount may prefer to defer the sales  
charges and have all of its investment  
immediately committed to shares.

4. Applicants propose to modify the  
Dual Distribution System to permit each  
Fund to pay to the Distributor an  
Account Maintenance Fee which would



be borne by the holders of Class A shares and would pay for certain account maintenance and shareholder support services provided to holders of Class A shares and certain other costs of the Distributor properly allocated to such shares. The Account Maintenance Fee also would provide additional resources to the Distributor to encourage sales of Class A shares, diminish the level of redemptions by Class A shareholders, and compete with other fund groups that pay similar fees to their distributors. The Account Maintenance Fee would be imposed at a maximum annual rate of 0.25% of the average daily net asset value of a Fund's Class A shares, pursuant to a plan adopted with respect to such Class A shares in accordance with rule 12b-1 under the 1940 Act.

5. The addition of the Account Maintenance Fee to the Class A shares would be implemented by each Fund in a manner similar to the implementation of the Dual Distribution System, except that there would be no specific shareholder vote with respect to the proposal. However, the rule 12b-1 plan authorizing the Account Maintenance Fee would be adopted by the Class A shareholders of each Fund in the same manner as the rule 12b-1 plan that applies to Class B shares, which are sold under the Deferred Option. Any such plan would be approved by the Fund's Directors/Trustees, including a majority of the independent Directors/Trustees, and by the Fund's Class A shareholders at the first shareholders' meeting.<sup>1</sup>

6. Applicants submit that the imposition of an Account Maintenance Fee would not constitute a major modification of the Dual Distribution System permitted under the Prior Order. The proposed conditions to the requested relief (as set forth below) are virtually identical to those of the Prior Order. The only significant difference in such conditions is that the calculations and determinations presently required with respect to the Class A shares would have to reflect the Account Maintenance Fee. Moreover, under the Dual Distribution System as it is proposed to be revised, as under the present Dual Distribution System, investors would have the same options

with respect to how they pay for the distribution of their shares—the Front-End Load Option or the Deferred Option. The Account Maintenance Fee, which is significantly lower than the Rule 12b-1 fee imposed on Class B shares, would not alter that fundamental choice.

7. Applicants represent that they have not experienced any conflicts of interest between the two classes of shares offered by the Existing Funds, nor do they believe that any conflicts would develop if the proposed modification of Class A shares were implemented.

#### Applicants' Legal Conclusions

1. Applicants seek an exemption from the provisions of sections 18(f), 18(g), and 18(i) of the 1940 Act to the extent that the imposition of the Account Maintenance Fee could be deemed to (a) result in the issuance of a "senior security" within the meaning of section 18(g) of the 1940 Act, which is prohibited by section 18(f) (1), or (2) violate the requirement in section 18(i) of the 1940 Act that every share of stock issued by a registered management investment company shall have equal voting rights with every other share of outstanding voting stock.

2. Applicants submit that the imposition of the Account Maintenance Fee on Class A shares would not result in shares of that class having "priority over [another such] class as to . . . payment of dividends" because the Class A and Class B shares of a Fund would each bear the expense of their respective Rule 12b-1 plan and any incremental transfer agency costs resulting from their distribution arrangement. Applicants note that each class of shares would have equal voting rights, except that each class would have exclusive rights with respect to matters concerning its rule 12b-1 plan. Applicants submit that the proposed allocation of expenses and voting rights relating to the rule 12b-1 plans in the manner described above is equitable and would not discriminate against any group of shareholders.

3. Applicants assert that the Commission has permitted other investment companies offering Class A type shares under a dual distribution arrangement to impose a fee that is similar in amount and purpose to the Account Maintenance Fee.

#### Applicants' Conditions

Applicants agree that any order of the Commission granting the requested

relief shall be subject to the following conditions:<sup>2</sup>

1. The Class A and Class B shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences between Class A and Class B shares of the same Fund will relate solely to: (a) The impact of the respective Rule 12b-1 fee payments made by each of the Class A and Class B shares of a Fund, any incremental transfer agency costs paid by the Class A and Class B shares of a Fund resulting from the Class A and Class B shares sales arrangements, and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order, (b) voting rights on matters which pertain to rule 12b-1 plans, (c) the different exchange privileges of the Class A and Class B shares as described in the prospectuses (and as more fully described in the statements of additional information) of the Funds, and (d) the designation of each class of shares of a Fund.

2. The Directors/Trustees of each of the Funds, including a majority of the independent Directors/Trustees, will approve the Dual Distribution System, as modified. The minutes of the meetings of the Directors/Trustees of each of the Funds regarding the deliberations of the Directors/Trustees with respect to the approvals necessary to implement the modified Dual Distribution System will reflect in detail the reasons for determining that the proposed modified Dual Distribution System is in the best interests of both the Funds and their respective shareholders and such minutes will be available for inspection by the Commission staff.

3. On an ongoing basis, the Directors/Trustees of the Funds, pursuant to their fiduciary responsibilities under the 1940 Act and otherwise, will monitor each Fund for the existence of any material conflicts between the interests of the two classes of shares. The Directors/Trustees, including a majority of the independent Directors/Trustees, shall

<sup>1</sup> If such meeting occurs prior to the granting of the order sought by the application, the Rule 12b-1 plan authorizing the Account Maintenance Fee would be presented for shareholder approval with effectiveness pending the date of issuance of any order on the application. Upon the effectiveness of any such order, the Account Maintenance Fee would be imposed by those Funds that had authorized the Account Maintenance Fee as of such date, subject to shareholder approval, as is the case with existing Rule 12b-1 plans.

<sup>2</sup> Short-Term Global, such of the New Funds as may, from time to time, determine to offer two classes of shares on the basis described herein and the Advisers and Distributor, in connection with the respective management and distribution services provided to any such funds, will comply with the conditions set forth herein: the Existing Funds, all other New Funds, and the Advisers and Distributor, in connection with the respective management and distribution services provided to any such funds, will continue to comply with the conditions set forth in the Prior Order.



take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Advisers and the Distributor will be responsible for reporting any potential or existing conflicts to the Directors/Trustees. If a conflict arises, the Advisers and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The rule 12b-1 plans relating to Class A and Class B shares of each Fund have been or will be approved and reviewed by the Fund's Directors/Trustees in accordance with the requirements and procedures set forth in rule 12b-1, both currently and as that rule may be amended in the future. Any rule 12b-1 plan adopted or amended to permit the assessment of a rule 12b-1 fee on any class of shares which has not had its rule 12b-1 plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of shares. Such meeting is to be held within 16 months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class first becomes effective.

5. The Directors/Trustees of the Fund will receive quarterly and annual statements complying with paragraph (b)(3)(ii) of rule 12b-1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale of Class A or Class B shares, respectively, or to the provision of services to holders of such shares, will be used to justify the rule 12b-1 fee attributable to such class. Expenditures not related to the sale of the Class A or Class B shares, or to services provided to holders of such shares, will not be presented to the Directors/Trustees to justify the Rule 12b-1 fees attributable to such class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Directors/Trustees in the exercise of their fiduciary duties.

6. Dividends paid by the Fund with respect to its Class A and Class B shares, to the extent any dividends are paid, will be calculated in the same manner at the same time on the same day and will be in the same amount, except that distribution fee payments made by a Fund under its Rule 12b-1 plan for Class A or Class B shares, and

any incremental transfer agency costs relating to Class A and Class B shares, will be borne exclusively by the respective class.

7. The methodology and procedures for calculating the net asset value and dividend/distributions of the Class A and Class B classes as they presently exist, and the proper allocation of expenses between those classes has been reviewed by the expert who has rendered a report to the applicants, which has been provided to staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. Such expert has also informed the applicants that, in its opinion, the imposition of the Account Maintenance fee would not alter such expert's prior conclusions with respect to such methodology and procedures. On an ongoing basis, the expert, or an appropriate substitute expert, will monitor the manner in which the calculations and allocations are being made under the modified Dual Distribution System and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the 1940 Act and the work papers of the expert with the respect to such reports, following request by the Funds which the Funds agree to provide, will be available for inspection by the Commission staff. The initial report of the expert was a "Special Purpose" report on the "Design of a System" and the ongoing reports have been and will continue to be "Design of a System and Certain Compliance Tests," as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividend/distributions of the classes of shares and the proper allocation of expenses between the classes of shares. This representation has been concurred with by the expert with respect to existing Class A and Class B shares in both the initial report and subsequent ongoing reports referred to in condition (7) above, and with respect to the proposed modified two classes of shares and the existing Class A and Class B shares, will be concurred with by the expert, or an appropriate substitute

expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. Applicants agree to take immediate corrective action if the expert, or appropriate substitute expert, does not so concur in the ongoing reports.

9. The prospectuses of each of the Funds will include a statement to the effect that a salesperson and any other person entitled to receive compensation for selling shares of the Fund may receive different compensation for selling Class A or Class B shares.

10. Merrill Lynch, Pierce, Fenner & Smith Incorporated will continue to follow its existing compliance standards, adopted in connection with the Dual Distribution System and set forth as Exhibit E to the application for the Prior Order, as to when Class A and Class B shares may appropriately be sold to particular investors. Applicants will require all persons selling Class A or Class B shares to agree to conform to such standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors/Trustees of the Funds with respect to the Dual Distribution System, as modified, will be set forth in guidelines which have been and will be furnished to the Directors/Trustees and made a part of the MLAM Directors' Manual setting forth the duties and responsibilities of the Directors/Trustees of the investment companies advised by MLAM and FAMI.

12. Each of the Funds will disclose its respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. For instance, the supplementary financial information including the per share table in each Fund's prospectus and the balance sheet in each Fund's prospectus or statement of additional information will be separately presented for each class of shares. Each of the Funds will disclose its respective expenses and performance data applicable to all classes of shares in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares of any Fund, it will also disclose the respective expenses and/or performance data applicable to all classes of shares of the Fund. Similarly, the information provided by the applicants for publication in any newspaper or similar listing of the



Funds' net asset values and public offering prices will separately present the Class A and Class B shares.

13. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply Commission approval, authorization, or acquiescence in any particular level of payments that the Funds may make pursuant to rule 12b-1 distribution plans in reliance on the exemptive order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-4827 Filed 2-28-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25262]

### Filings—Public Utility Holding Companies

February 22, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 18, 1991, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Utilities Associates et al. (70-7630)

Ocean State Power I ("OSP I") and Ocean State Power II ("OSP II"), both located at One Bowdoin Square, Boston, Massachusetts 02114, general

partnerships and subsidiaries of EUA Ocean State Corporation ("EUA-OS"), Washington Highway, Lincoln, Rhode Island 02865, and Narragansett Energy Resources Company ("NERC"), 280 Melrose Street, Providence, Rhode Island 02901; and their respective indirect and direct parent companies, Eastern Utilities Associates ("EUA"), One Liberty Square, Boston, Massachusetts 02107 and New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582; EUA Service Corporation, 750 West Center Street, West Bridgewater, Massachusetts 02379, and New England Power Service Company, 25 Research Drive, Westborough, Massachusetts 01582, service company subsidiaries of EUA and NEES, respectively; Blackstone Valley Electric Company, Washington Highway, Lincoln, Rhode Island 02865, a subsidiary of EUA; TransCanada Pipelines Company, 54 Commerce Court West, Toronto, Ontario M5L 1C2, Canada, and its indirect subsidiary TCPL Power Ltd., 123 Dyer Street, Providence, Rhode Island 02903, as affiliate of OSP I and OSP II, have filed a post-effective amendment under sections 6(a), 7, 9(a), 10, 12(b) and 12(c) and rules 42, 43, 45 and 46 thereunder to their joint application-declaration filed under sections 6(a), 7, 9(a), 10, 12(b), 12(d), 12(f), 13(b) and 13(e) of the Act and rules 43, 44, 45, 50(a)(5), 90, 91 and 95 thereunder.

By orders dated October 13, 1988 (HCAR No. 24727), December 23, 1988 (HCAR No. 24790), September 28, 1989 (HCAR No. 24960) and December 18, 1990 (HCAR No. 25217), the Commission authorized, among other things, certain transactions with respect to Unit I and Unit II of the Ocean State Power Project ("Project"), a combined cycle electric generating facility located in Rhode Island, which included: (1) The formation by EUA and NEES of new subsidiary companies, EUA-OS and NERC, respectively; (2) the respective acquisition by EUA-OS and NERC of 29.9% and 20% equity interests in each of two partnerships, OSP I and OSP II, formed to own and operate Unit I and Unit II of the Project for aggregate investment amounts of \$71.27 million and \$50 million; (3) the funding by EUA and NEES of EUA-OS and NERC to enable them to meet their obligations to make capital contributions to OSP I and OSP II in the same aggregate investment amounts; and (4) the financing of 100% of the construction of each of the units through non-recourse loans under separate general construction loan credit facilities ("Unit I and Unit II Credit Facilities") in connection with which: (1) EUA-OS, NERC and the other

partners in OSP I and OSP II entered into Equity Contribution Agreements whereby they agreed that upon commercial operation of each of Unit I and Unit II to make equity contributions aggregating no more than approximately 50% of the total commitments under the respective credit facilities, and (2) EUA, NERC and other parent corporations of partners in OSP I and OSP II agreed to enter into Equity Contribution Support Agreements to provide proportional guarantees of their respective subsidiaries' obligations under the Equity Agreements.

EUA-OS and NERC now propose to make distributions of capital to EUA and NEES, respectively, which has been returned to them by OSP II as the Project is depreciated. The capital will be returned through repurchases of common stock or the payment of dividends out of capital.

EUA-OS and NERC further propose to make additional capital contributions to their subsidiary OSP II to satisfy rate refund obligations that OSP II may incur. The Unit I Credit Facility contained a provision designed to protect the banks ("Banks") from regulatory risk in the event any of the purchasers of power from Unit I instituted a proceeding at the Federal Energy Regulatory Commission ("FERC") to challenge the rates being charged under power purchase contracts ("Proceeding"). This provision required that partnership distributions, which otherwise could have been made to the OSP II partners, would be retained to the extent of the refund amount at issue in a reserve account with the agent ("Agent") pending resolution of the Proceeding, and then would be used to satisfy any resulting FERC-ordered rate refund obligation incurred by the partnership.

The lending banks and the OSP II partners amended the Unit I and Unit II Credit Facility to provide for an alternative method for meeting such refund obligations. Partners may now elect to continue to receive available partnership distributions if they agree to repay such distributions to the Banks in the event any such Proceeding results in a refund obligation, which (i) is greater than \$45 million and (ii) reduces OSP II's Debt Service Coverage Ratio, as defined, for any calendar quarter below 1.4 to 1, and provided that each partner's repayment obligation is guaranteed by the partner's sponsor, EUA and NEES in this case. EUA and NEES have applied for authority to make such guarantees by post-effective amendment to S.E.C. File No. 70-7540, for which a public notice was issued by the Commission on



February 1, 1991 (HCAR No. 25250). The amount of the repayment obligation, and therefore the amount of any capital contribution would be determined by the amount of the refund obligation, but could never be more than the distributions made to the individual partner from the effective date of any FERC-ordered refund. Payments made by a sponsor under its guaranty would be deemed to be a capital contribution by the partner to the partnership, and would be investments in the partner by the sponsor, in addition to those previously authorized.

#### Northeast Utilities et al. (70-7781)

Northeast Utilities ("NU"), a registered holding company, and two of its subsidiaries, Northeast Utilities Service Company ("NUSCO") and The Rocky River Realty Company ("Rocky River") (collectively, "Companies"), all located at Selden Street, Berlin, Connecticut 06037, have filed a declaration under sections 6(a), 7, 12(b) and 12(f) of the Act and rules 45, 50, 90 and 91 thereunder.

The Companies propose to enter into a series of transactions related to the financing of a new, 253,000 square-foot office building and three-tiered employee parking facility ("Project") in Berlin, Connecticut that will be used primarily by 950 NUSCO employees currently located in leased office space in Rocky Hill and Meriden, Connecticut. The Project, estimated cost \$28 million, will be financed, constructed and owned by Rocky River on land adjacent to the NU system's general offices in Berlin, Connecticut. Rocky River proposes to: (1) Issue and sell, through December 31, 1991, short-term notes ("Short-Term Notes") to Swiss Bank ("Short-Term Lender") in the principal amount of \$28 million, pursuant to a note purchase agreement ("Short-Term Note Agreement"); (2) issue and sell, through December 31, 1992, long-term notes to banks or other financial institutions ("Long-Term Lender") in the aggregate principal amount of \$28 million ("Series B Notes"), pursuant to a note purchase agreement ("Long-Term Note Agreement"); and (3) issue and sell, through December 31, 1992, long-term notes to banks or other financial institutions ("Refinancing Lender") in the aggregate principal amount of \$15 million ("Series A Notes"), pursuant to a note purchase agreement ("Series A Note Agreement"). The Series A Notes and the Series B Notes will be sold in accordance with the alternative procedures authorized by the Commission's Statement of Policy, dated September 2, 1982 (HCAR No. 22623). The proceeds of the Series B Notes will

be used to repay the short-term notes and provide long-term financing for the Project. The proceeds of the Series A Notes will be used to repay funds lent by NU to Rocky River through the NU system Money Pool. In addition, NU proposes to make, through December 31, 1992, a capital contribution of \$2.8 million to Rocky River for relocation expenses.

The Short-Term Note Agreement provides that, prior to the maturity date, Rocky River may request advances of principal ("Advances") from the Short-Term Lender. Proceeds of the Advances may be used for general corporate purposes, including payment of direct or indirect incurred with respect to construction of the Project. Advances will bear interest from the date of each Advance to the maturity date, which will be a date of not more than two years from the date of the first advance ("Maturity Date"). Interest on the Advances will be payable, on the Maturity Date, on the daily aggregate principal balance of such Advances outstanding for the applicable interest period ("Interest Period") at the London Interbank Borrowing Rate ("LIBOR"). Interest Period means the period from and including the first day of each month to and including the last day of such month. The LIBOR is defined as the sum of (i) The interest rate per annum (computed on the basis of a 360-day year of actual days elapsed) equal to the rate at which dollar deposits approximately equal in principal to the amount of Advances outstanding and for a maturity equal to the applicable Interest Period are offered to the Short-Term lender in immediately available funds in the Cayman Islands Interbank Market at approximately 11:00 a.m. New York time two business days prior to the commencement of such Interest Period, plus (ii) 0.625 percent. At the end of each Interest Period, accrued and unpaid interest on the Advances will be added to the principal amount outstanding and will thereafter be deemed principal for all purposes.

The Short-Term Note Agreement also provides that if the Advances requested by Rocky River aggregate less than \$14 million over the life of the Note, Rocky River will pay a facility fee of .125 percent per annum on the difference between the actual aggregate amount of the Advances and \$14 million. The Short-Term Notes may be prepaid without premium at any time upon thirty days' notice to the owner of the Short-Term Note.

The Series B notes will bear interest at a fixed rate equal to the rate of the 17.5-year United States Treasury

Security, plus a percentage to be determined during the competitive bid process. Interest will be payable monthly, in arrears, commencing on the date of purchase. Principal and interest will be payable in level monthly installments, in arrears, beginning no later than thirty days after the date of purchase over the life of the notes. The Series B Notes may be prepaid in whole or in part, in minimum amounts of \$5 million, on any monthly payment date beginning not less than two years after the date of purchase.

The Series A Notes will bear interest at a fixed rate equal to the rate of the 9.5-year United States Treasury Security, plus a percentage to be determined during competitive bidding. Interest will be payable monthly, in arrears, commencing on the date of purchase. Principal and interest will be payable in level monthly payments of principal and interest, beginning no later than thirty days after the date of purchase. The Series A Notes may be prepaid, in whole or in part, in minimum amounts of \$5 million, on any monthly payment date beginning not less than two years after the date of purchase.

NU will guarantee Rocky River's obligations under the Short-Term Note Agreement, the Series A Note Agreement and the Series B Note Agreement and the Short-Term Notes, the Series A Notes and the Series B Notes.

Rocky River also proposes to terminate existing leases for the NU general offices site and facilities and enter into two new leases with NUSCO that would, together, cover the entire 121-acre parcel ("Project Lease" and "Offices Lease"). The Project Lease would cover the Project and the Offices Lease would cover the balance of the site (including the aerial device facility built in 1989 but not including the adjacent 20-acre parcel acquired in 1989). Rocky River will collaterally assign the Project Lease to the Long-Term Lender as security for the Series B Notes and the Offices Lease to the Refinancing Lender as security for the Series A Notes. The Offices Lease will cover the general offices property exclusive of the adjacent parcel acquired in 1989. It will be a net lease and will incorporate the terms of the existing leases. It will provide for rental payments covering debt service on the Series A Notes for so long as the collateral assignment is in effect, together with all costs of operating and maintaining the property.

The Project Lease will be a net lease with provisions patterned on the provisions of the Offices Lease. It will



have a term that is coterminous with that of the Series B Notes and will provide for rental payments sufficient to cover the debt service on the Series B Notes, as well as all costs of operating and maintaining the Project.

#### **The Potomac Edison Co. (70-7786)**

The Potomac Edison Company ("Potomac Edison"), Downsville Pike, Hagerstown, Maryland 21740, a subsidiary of Allegheny Power System, Inc., a registered holding company, has filed an application-declaration under sections 6(a), 6(b), and 7 of the Act and rule 50(a) (5) thereunder.

Potomac Edison proposes to issue and sell, from time-to-time through March 31, 1993, short-term notes ("Notes") to banks and commercial paper ("Commercial Paper") to dealers to commercial paper in an aggregate principal amount not to exceed \$93 million outstanding at any one time. Each note payable to a bank will be dated as of the date of the borrowing it evidences, will mature not more than 270 days after the date of issuance or renewal thereof, will bear interest at a mutually agreed upon rate provided that the effective rate for any 30 day period, on an annualized basis, not exceed prime plus 2 percentage points. The Notes may or may not have prepayment provisions.

The Commercial Paper will not be prepayable and will have varying maturities, none more than 270 days. The Commercial Paper will be sold directly to the dealers at a discount rate to Potomac Edison not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and of the particular maturity. The dealers may reoffer the Commercial Paper at a discount rate of up to  $\frac{1}{4}$  of 1% per annum less than the discount rate to Potomac Edison. An exemption from the competitive bidding requirements of rule 50 has been requested under rule 50(a)(5) for the proposed issuance and sale of Commercial Paper.

#### **Southwestern Electric Power Co. (70-7830)**

Southwestern Electric Power Company ("SWEPCO"), 428 Travis Street, Shreveport, Louisiana 71156, an electric public-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed a declaration under section 12(d) of the Act and rule 44 thereunder.

SWEPCO proposes to sell certain distribution substation facilities ("Facilities") located at Big Three Industries' ("Big Three") Longview Plant

in Gregg County, Texas to Big Three for \$103,000.00. The Facilities consist of one 69kv transformer, three 5kv and three 60kv lightning arresters, one 100 amp fuse cutout, three 69kv fuse switches and miscellaneous insulators, conduit, cable, wire, structural steel and other substation equipment. SWEPCO will execute a bill of sale and receive a release deed in order to release the Facilities from the lien of the SWEPCO's mortgage indenture, as amended, dated February 1, 1940, between SWEPCO and Continental Bank, National Association and M.J. Kruger, successor co-trustee, as Trustees. SWEPCO anticipates that the proceeds from the proposed sale will be added to SWEPCO's general operating funds.

#### **Arkansas Power & Light Co. (70-7834)**

Arkansas Power & Light Company ("AP&L"), 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201, a wholly owned electric public-utility subsidiary company of Entergy Corporation, a registered holding company, has filed an application-declaration under sections 9(a), 10, and 12(c) of the Act and Rule 42 thereunder.

AP&L proposes to issue and sell shares of its preferred stock, \$.01 par value ("Class A Preferred"). The Class A Preferred will have an aggregate price payable in the event of involuntary liquidation ("Liquidation Value") not to exceed (1) \$100 million, and/or (2) four million shares of its preferred stock, cumulative, \$25 par value, and/or (3) one million shares of its preferred stock, cumulative, \$100 per value; provided, however, that the aggregate of the Liquidation Value of Class A Preferred issued, together with the total par value of other classes issued shall not exceed \$100 million (collectively, "New Preferred Stock"). The New Preferred Stock will be issued and sold in one or more new series through August 31, 1992 under the exemption provisions of rule 52.

The terms of one or more series of the New Preferred Stock may include provisions for mandatory or optional redemption at various prices and may include various restrictions on optional redemption for a given number of years. AP&L may include provisions for a sinking fund for any series of New Preferred Stock designed to redeem annually, commencing a specified number of years after the first day of the calendar month in which such series is issued, at par value or, in the case of Class A Preferred, Liquidation Value per share of such series plus accumulated dividends, a number of shares equal to a given percentage of the total number of shares of such series, with AP&L

possibly having a non-cumulative option to redeem annually an additional number of shares up to a given number of percentage of the total number of shares of such series. Pursuant to the terms of the sinking fund, AP&L can purchase shares and credit the shares against the sinking fund requirement. In addition, AP&L may "sink" New Preferred Stock in amounts equal to its sinking fund option, by purchasing amounts equal to or less than the optional sinking fund redemption price.

AP&L requests authorization for the period during which any shares of the New Preferred Stock are outstanding to (1) Redeem shares of its New Preferred Stock in accordance with any mandatory or optional redemption provisions established at the time of the New Preferred Stock's initial issuance, and (2) redeem (or purchase in lieu of redemption) shares of New Preferred Stock in accordance with the sinking fund provisions established at the New Preferred Stock's initial issuance.

In addition, AP&L proposes to acquire from time-to-time through August 31, 1992, in whole or in part, prior to their respective maturities, certain of AP&L's outstanding securities, up to and including: (a) \$350 million aggregate principal amount of one or more series of AP&L's first mortgage bonds, (b) \$175 million aggregate principal amount of one or more series of the pollution control revenue bonds and/or solid waste disposal bonds issued for AP&L's benefit and (c) \$150 million aggregate par value of one or more series of AP&L's preferred stock (collectively, "Proposed Acquisitions"). The Proposed Acquisitions will be acquired through tender offers, negotiated, open market or other forms of purchase or redemption.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 91-4826 Filed 2-28-91; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-848]

#### **Application and Opportunity for Hearing: UNIX System Laboratories, Inc.**

February 25, 1991.

Notice is hereby given that UNIX System Laboratories, Inc. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant



from certain reporting requirements under section 15(d) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person, not later than March 22, 1991 may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-4829 Filed 2-28-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18014; File No. 811-5512]

### The Value Line U.S. Government Securities Trust

February 22, 1991.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

**APPLICANT:** The Value Line U.S. Government Securities Trust ("Applicant").

**RELEVANT 1940 ACT SECTION:** Order requested under section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on October 12, 1990, and amended on December 20, 1990 and on February 6, 1991.

**HEARING OR NOTIFICATION OF HEARING:** If no hearing is ordered, the application

will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m. on March 20, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Value Line U.S. Government Securities Trust, 711 Third Avenue, New York, NY 10017, Attn: Rodd M. Baxter, Esq.

**FOR FURTHER INFORMATION CONTACT:** Thomas Bisset, Staff Attorney, at (202) 272-2058 or Nancy M. Rappa, Senior Attorney, at (202) 272-2622, Office of Insurance Products and Legal Compliance (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 253-4300).

### Applicant's Representations

1. Applicant is an open-end investment company which was organized as a business trust under the laws of Massachusetts on May 14, 1987. Applicant filed registration statements pursuant to the Securities Act of 1933 on June 29, 1987 and September 22, 1987. The registration statement filed on June 29, 1987 registered an indefinite number of shares pursuant to rule 24f-2. The registration statements became effective on September 30, 1987.

2. Applicant's shares are only made available to the public in connection with the purchase and ownership of single premium variable life insurance contracts. Value Line, Inc. ("Value Line") serves as the Applicant's investment adviser.

3. The Board of Trustees of the Applicant authorized the liquidation of the Applicant at a meeting held on June 20, 1990. At such meeting it was noted that the Applicant's assets had plateaued at less than \$5 million and it was unlikely that such assets would increase. Accordingly, it was not economical for Value Line, Inc. to continue to manage the Applicant. The Board of Trustees then authorized the

appropriate officers of Value Line, Inc. to take the steps necessary to effect the liquidation of the Applicant. At a meeting held on September 19, 1990, the Board of Trustees set the date of liquidation for September 21, 1990. At that time, the Board of Trustees also authorized the filing of this application with the SEC to withdraw the Applicant's registration as a registered investment company under the Act.

4. Guardian Insurance & Annuity Company, Inc. ("GIAC"), a stock life insurance company incorporated under the laws of the State of Delaware, is the sole shareholder of the Applicant. GIAC, through a separate account, invested in shares of the Applicant to fund variable life insurance contracts issued by GIAC. GIAC determined that it was in the best interest of its policy owners to eliminate the investment division of Separate Account B which purchased shares of the Applicant. GIAC applied for and received an order from the SEC approving the substitution of the Guardian Cash Fund's shares for the Applicant's shares. Upon the receipt of the order, GIAC automatically transferred account values from the Applicant to the Guardian Cash Fund at relative net asset value without the imposition of any charges. On September 21, 1990 shares of stock issued by the Guardian Cash Fund, Inc. were substituted for shares of the Applicant. Only those shares that represent GIAC's initial seed capital investment remain in the Applicant.

5. The Applicant's Declaration of Trust provides that the Applicant can be terminated by a two-thirds vote of its shareholders. GIAC as sole shareholder of the Applicant approved the liquidation by written instrument on September 19, 1990.

6. The only assets retained by the Applicant as of the date of this filing are the shares representing GIAC's initial seed capital contribution. On September 21, 1990, these shares were valued at \$130,351.80. Such shares are being retained until all expenses have been paid. All unamortized organizational expenses will be assumed by GIAC. No assets will be reinvested in securities.

7. All expenses directly incurred in connection with the liquidation are being paid by GIAC or Value Line, Inc. The only debts pending are outstanding legal, accounting and printing expenses of the Applicant.

8. GIAC is the only securityholder of the Applicant at the time of filing of this Application. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, and does not propose to engage, in any



business activities other than those necessary for winding up its affairs. Applicant intends to file a Certificate of Termination of Trust in accordance with state law after the relief requested has been granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 91-4823 Filed 2-28-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18016; 812-7673]

### Hyperion Government Mortgage Trust II, et al.; Application

February 22, 1991.

**AGENCY:** Securities and Exchange Commission (the "SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** Hyperion Government Mortgage Trust II (the "Trust") and Signature Broker-Dealer Services, Inc. (the "Distributor").

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) that would grant an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) and Rule 22c-1.

**SUMMARY OF APPLICATION:** Applicants seek an order that would permit a series of the Trust, and other registered open-end investment companies in the same group of investment companies, to assess a contingent deferred sales load ("CDSL") on certain redemptions of the shares, and to waive the CDSL in certain cases.

**FILING DATES:** The application was filed on January 23, 1991.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 19, 1991, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writers interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549.

Applicants: Trust, 520 Madison Avenue, New York, New York 10022; Distributor, 6 St. James Avenue, Boston, Massachusetts 02116.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth G. Osterman, Staff Attorney, at (202) 504-2524 or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

#### Applicants' Representations

1. The Trust is an open-end diversified management investment company registered under the Act. The Trust intends to offer shares of Hyperion/Ranieri Adjustable Rate U.S. Government Fund II (the "Fund") upon the SEC declaring the Fund's registration statement effective. The Trust intends to invest substantially all of the assets of the Fund in a registered investment company (the "Portfolio"), with the same investment objectives as the Fund. Hyperion Capital Management, Inc. serves as the Portfolio's investment adviser. The Distributor acts as principal underwriter of the Fund's shares. The Trust intends to make Rule 12b-1 plan payments to the Distributor at an annual rate of up to 1.25% of the Fund's average daily net assets.

2. Applicants request that any relief also apply to future series of the Trust and other registered open-end investment companies (i) whose principal underwriter is the Distributor or a principal underwriter that is under common control with the Distributor (as "control" is defined by section 2(a)(19) of the Act), (ii) which hold themselves out to investors as being related for purposes of investment and investor services and (iii) whose CDSC, rate of distribution fees and exchange privileges are identical to those applicable to the Fund's shares as described in the application. Any such series or investment companies will be subject to the condition contained in the application.

3. Applicants seek an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c-1 thereunder to permit the Fund to assess a CDSL on redemptions of Fund shares and to permit the Fund to waive the CDSL for certain types of redemptions. The CDSL is expected to be 3% of the net asset value of the shares redeemed during the first year

after purchase (but, subject to the requirement that the CDSL comply, to the extent applicable, with the NASD sales load limitations and the provisions of proposed Rule 6c-10,<sup>1</sup> may be higher or lower) and will be reduced at a rate of 1% per year over the applicable CDSL period, so that redemptions after that period will not be subject to a CDSL.

4. The CDSL will not be imposed on redemptions of (a) shares which were purchased more than a specified period of up to six years (the "CDSL Period") prior to their redemption or (b) shares derived from the reinvestment of distributions. Furthermore, no CDSL will be imposed on an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSL Period. In determining whether a CDSL is applicable, it will be assumed that a redemption is made first of shares derived from reinvestment of distributions, second of shares held for a period longer than the CDSL Period and third of shares held for a period not longer than the CDSL Period.

5. The Fund seeks the ability to waive the CDSL on redemptions (a) following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, as amended (the "IRC"), of a shareholder, or (b) in connection with certain distributions from an individual retirement account, a custodial account maintained pursuant to IRC Section 403(b)(7) or a qualified pension or profit-sharing plan.<sup>2</sup> In addition, the CDSL may be waived in connection with the exercise of certain exchange privileges among shares of the Fund and the shares of any other fund in the same family of funds. Any exchange privilege of Fund shares will comply with the provisions of Rule 11a-3. In waiving or reducing a CDSL, the Fund will comply with the requirements of Rule 22d-1 under the Act as if such CDSL were a sales load. If the Fund waives or reduces the CDSL, such waiver or reduction will

<sup>1</sup> On November 2, 1988, the Commission proposed Rule 6c-10 under the Act. See Investment Company Act Release No. 16619 [53 FR 45275, November 8, 1988]. If adopted as proposed, Rule 6c-10 would permit open-end management companies to impose deferred sales loads, subject to the requirements of the rule.

<sup>2</sup> The CDSL would be waived for any redemption (a) in connection with a lump-sum or other distribution after attaining age 59½ or, in the case of a qualified pension or profit-sharing plan, after termination of employment after age 55, or (b) which results from the tax-free return of an excess contribution pursuant to IRC Section 408(d)(4) or (5), or the return of excess deferral amounts pursuant to IRC Section 401(k)(8) or 402(g)(2).



be uniformly applied to all offerees in the class specified.

6. If the Trustees determine to discontinue the waiver of the CDSL, the disclosure in the Fund's prospectus will be appropriately revised. Also, the CDSL relating to any shares purchased prior to the termination of such waiver will be waived as provided in the Fund's prospectus at the time of the purchase of such shares.

#### Applicants' Legal Conclusions

1. Section 2(a)(32) of the Act defines redeemable security to be a security that, upon presentation to the issuer or to a person designated by the issuer, entitles the shareholder to receive approximately his proportionate share of the issuer's current net assets. Applicants assert that the imposition of the CDSL will not restrict a shareholder from receiving a proportionate share of the current net assets, but will merely defer the deduction of a sales charge and make it contingent upon an event that may never occur. However, to avoid uncertainty in this regard, applicants request an exemption from the operation of section 2(a)(32) of the Act to the extent necessary to permit the imposition of the proposed CDSL.

2. Section 2(a)(35) of the Act defines sales load to be the amount properly chargeable to sales or promotional expenses that are paid at the time the securities are purchased. In this case, applicants will pay the CDSL to the Distributor to reimburse it for expenses related to the sale of shares; therefore, applicants submit that this arrangement is within the section 2(a)(35) definition of sales load, but for timing of the imposition of the charge. Applicants contend that the deferral of the sales charge, and its contingency upon the occurrence of an event that may not occur, does not change the basic nature of this charge, that is in every other respect a sales charge.

3. Section 22(c) of the Act and Rule 22c-1 thereunder require that the price of a redeemable security issued by an open-end management company for purposes of sale, redemption and repurchase be based on the company's current net asset value. Applicants contend that the redemption price of their shares is based on current net asset value. The CDSL is then deducted from this redemption price. However, to avoid any question as to the potential applicability of section 22(c) and Rule 22c-1, applicants request an exemption from Rule 22c-1 to the extent necessary to permit applicants to impose the proposed CDSL.

4. Applicants request an exemption from the provisions of section 22(d) of

the Act to permit the waiver of the CDSL as described in this notice. Section 22(d) requires a registered investment company, principal underwriter or dealer in redeemable securities to sell those securities only at a current public offering price described in the company's prospectus. Subject to certain conditions, Rule 22d-1 provides an exemption from section 22(d) allowing investment companies to charge different sales loads to different classes of investors. The CDSL and the waivers therefrom will be applied as described in the Fund's registration statement. Further, applicants will comply with the conditions of Rule 22d-1 as if the CDSL was a sales load. However, to preclude any assertion that Rule 22d-1 is inapplicable to the CDSL, applicants request an exemption from section 22(d) to the extent necessary or appropriate to implement the CDSL and waivers therefrom as described above.

#### Applicants' Condition

1. Applicants agree that any order granting the requested relief shall be subject to applicants' compliance with the provisions of proposed Rule 6c-10 under the Act as currently stated and as it may be adopted and modified in the future.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 91-4873 Filed 2-28-91; 8:45 am]

BILLING CODE 8010-01-M

#### SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Area #7247]

**Declaration of Disaster Loan Area; California (With Contiguous Counties in Arizona (#7248) and Nevada (#7249))**

The Counties of Alameda, Butte, Colusa, Fresno, Glenn, Imperial, Kern, Los Angeles, Madera, Marin, Mendocino, Merced, Monterey, Napa, Riverside, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Sutter, Tulare, Ventura, Yolo, and Yuba, and the contiguous counties of Amador, Calaveras, Contra Costa, Humboldt, Inyo, Kings, Lake, Mariposa, Mono, Nevada, Orange, Placer, Plumas, Sacramento, San Francisco, Sierra, Stanislaus, Tehama, Trinity, and Tuolumne in the State of California; LaPaz, Mohave, and Yuma Counties in

the State of Arizona; and Clark County in the State of Nevada constitute an Economic Injury Disaster Loan Area due to freezing temperatures beginning on December 19, 1990 and continuing through January 3, 1991.

Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on November 15, 1991 at the address listed below: Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853-4795, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: February 15, 1991.

June M. Nichols,

Acting Administrator.

[FR Doc. 91-4896 Filed 2-28-91; 8:45 am]

BILLING CODE 8025-01-M

#### Region VI Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Little Rock, will hold a public meeting at 10 a.m. on Thursday, March 7, 1991, at the Big Mac State Capitol Complex, room 4A400, Little Rock, Arkansas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Donald L. Libbey, District Director, U.S. Small Business Administration, 320 W. Capitol, suite 601, Little Rock, Arkansas 72201, telephone (501) 324-5871.

Dated: February 15, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-4897 Filed 2-28-91; 8:45 am]

BILLING CODE 8025-01-M

#### Region V Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Indianapolis, will hold a public meeting at 9:30 a.m. on Tuesday, March 19, 1991, at the North Meridian Inn, 1530 North Meridian Street, Indianapolis, Indiana, to discuss such matters as may be presented by members, staff of the



U.S. Small Business Administration, or others present.

For further information, write or call Robert D. General, District Director, U.S. Small Business Administration, 429 North Pennsylvania Street, suite 100, Indianapolis, Indiana 46204-1873, telephone (317) 226-7275.

Dated: February 21, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-4900 Filed 2-28-91; 8:45 am]

BILLING CODE 8025-01-M

#### Region IX Regional Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Los Angeles, will hold a public meeting at 11 a.m. on Thursday, March 7, 1991, at the Verdugo Club, 400 West Glenoaks Boulevard, Glendale, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call M. Hawley Smith, District Director, U.S. Small Business Administration, 330 N. Brand Blvd., suite 1200, Glendale, California 91203, telephone (213) 894-2977.

Dated: February 21 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-4898 Filed 2-28-91; 8:45 am]

BILLING CODE 8025-01-M

#### Region I Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, will hold a public meeting at 8:30 a.m. on Monday, April 1, 1991, at the Days Inn, 900 East Main Street, Meriden, Connecticut, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Michael P. McHale, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut, telephone (203) 240-4670.

Dated: February 21, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-4899 Filed 2-28-91; 8:45 am]

BILLING CODE 8025-01-M

#### Region IV Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Jackson, will hold a public meeting from 1:30 p.m. to 4:30 p.m., on Thursday, April 25, 1991, in the Jackson District Office of the U.S. Small Business Administration, Jackson, Mississippi, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Jack Spradling, District Director, U.S. Small Business Administration, 101 W. Capitol Street, suite 400, Jackson, Mississippi 39201, telephone (601) 965-4378.

Dated: February 21, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-4901 Filed 2-28-91; 8:45 am]

BILLING CODE 8025-01-M

#### Region VI Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Oklahoma City, will hold a public meeting from 1 p.m. to 5 p.m., on Tuesday, March 19, 1991, at Metro Tech Conference Center, 1900 Springlake Drive, Oklahoma City, Oklahoma, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Harry L. Turk, District Director, U.S. Small Business Administration, 200 NW. 5th Street, suite 670, Oklahoma City, Oklahoma 73102, telephone (405) 213-5237.

Dated: February 21, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-4902 Filed 2-28-91; 8:45 am]

BILLING CODE 8025-01-M

#### Region VI Advisory Council Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Corpus Christi, will hold a public meeting at 1 p.m. on Tuesday, April 16, 1991, at the U.S. Small Business Administration, Corpus Christi Branch Office, 400 Mann Street, Suite 403, Corpus Christi, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small

Business Administration, or others present.

For further information, write or call David Royal, Business Development Specialist, U.S. Small Business Administration, Government Plaza, 400 Mann Street, Suite 403, Corpus Christi, Texas 78401, telephone (512) 888-3333.

Dated: February 21, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-4903 Filed 2-28-91; 8:45 am]

BILLING CODE 8025-01-M

#### Region VI Advisory Council Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of El Paso, will hold a public meeting at 9 a.m. on Thursday, March 14, 1991, at the M Bank, 221 N. Kansas, the Old El Paso Room, 7th Floor, El Paso, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John E. Scott, District Director, U.S. Small Business Administration, 10737 Gateway West, Suite 320, El Paso, Texas 79935, telephone (915) 540-5676.

Dated: February 21, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-4904 Filed 2-28-91; 8:45 am]

BILLING CODE 8025-01-M

#### Region VI Advisory Council Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Houston, will hold a public meeting at 10 a.m. on Tuesday, March 12, 1991, at the First City Financial Center, Fannin Room, 13th Floor, 1301 Fannin, Houston, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Rodney W. Martin, District Director, U.S. Small Business Administration, 2525 Murworth, Suite 112, Houston, Texas 77054, telephone (713) 660-4409.

Dated: February 21, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-4905 Filed 2-28-91; 8:45 am]

BILLING CODE 8025-01-M



**Region VI Advisory Council Meeting**

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Lubbock, will hold a public meeting at 1:15 p.m. to 3 p.m. on Thursday, March 28, 1991, in the Conference Room of the U.S. Small Business Administration, 1611 10th Street, Suite 200, Lubbock, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Walter Fronstin, District Director, U.S. Small Business Administration, 1611 10th Street, Suite 200, Lubbock, Texas 79401, telephone 1-800-676-1005.

Dated: February 21, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-4906 Filed 2-28-91; 8:45 am]

BILLING CODE 8025-01-M

**Advisory Committee on Veterans Business Affairs; Public Meeting**

The U.S. Small Business Administration, Advisory Committee on Veterans Business Affairs, will hold a public meeting at 10 a.m. on Wednesday, March 20, 1991, at the U.S. Small Business Administration, 409 3rd Street, 5th Floor, SW., Washington, DC, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Leon J. Bechet, District Director of the Office of Veterans Affairs, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205-6773.

Dated: February 21, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-4907 Filed 2-28-91; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5543]

**Empire State Capital Corp.; Issuance of a Small Business Investment Company License**

On April 26, 1990, a notice was published in the Federal Register (55 FR 17706) stating that an application has been filed by Empire State Capital Corporation, 330 Seventh Avenue, 15th Floor, New York, New York 10001, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102

(1990)) for a license to operate as a small business investment company.

Interested parties were given until close of business May 25, 1990 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-5543 on February 5, 1991, to Empire State Capital Corporation, to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 25, 1991.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 91-4908 Filed 2-28-91; 8:45 am]

BILLING CODE 8025-01-M

**DEPARTMENT OF STATE**

[Public Notice 1354]

**Office of Defense Trade Control; Munitions Exports to Oldelft and Related Entities**

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that all licenses and approvals issued to the firm DELFT INSTRUMENTS N.V., commonly referred to as OLDELFT, and any of its subsidiaries and associated companies, to export or otherwise transfer defense articles and defense services pursuant to section 38 of the Arms Export Control Act are suspended. In addition, it shall be the policy of the Department of State to deny all export license applications involving, directly or indirectly, DELFT INSTRUMENTS N.V., OIP INSTRUBEL, and FRANKS & CO. OPTIK GMBH.

**EFFECTIVE DATE:** January 25, 1991.

**FOR FURTHER INFORMATION CONTACT:** Clyde Bryant, Chief, Compliance Division, Office of Defense Trade Controls, Center for Defense Trade, Department of State (703-875-6650).

**SUPPLEMENTARY INFORMATION:** On January 25, 1991, the Department of State suspended all licenses and other written approvals (including manufacturing license and technical assistance agreements) concerning exports of defense articles and provision of defense services to the firm DELFT INSTRUMENTS N.V., commonly referred to as OLDELFT, and any of its subsidiaries or associated companies.

The firm is also known as: OLD DELFT; OLDE DELFT; OUDE DELFT; DELFT INSTRUMENTS ELECTRO-OPTICS; OPTISCHE INDUSTRIE OUDE DELFT; DELFT ELECTRONISCHE PRODUCTS. Its subsidiaries include OIP INSTRUBEL (Belgium) and FRANKS & CO. OPTIK GMBH (Germany). These are not exhaustive lists, however, and exporters should consult the Office of Defense Trade Controls regarding exports destined for an end user not listed above, but which they suspect is related to OLDELFT.

This action has been taken pursuant to sections 38 and 42 of the Arms Export Control Act (AECA) (22 U.S.C. 2778, 2791) and §§ 126.7(a)(1) and 126.7(a)(2) of the International Traffic in Arms Regulations (ITAR) (22 CFR 126.7(a)(1), 126.7(a)(2)) in furtherance of the foreign policy and national security of the United States. It will remain in force until rescinded.

In addition, pursuant to section 38(g)(4)(B) of the AECA (22 U.S.C. 2778(g)(4)(B)), § 126.7(a)(6) of the ITAR (22 CFR 126.7(a)(6)), and the Department of Commerce Order Denying Export Privileges to DELFT INSTRUMENTS N.V., OIP INSTRUBEL, and FRANKS & CO. OPTIK GMBH (February 22, 1991), it shall be the policy of the Department of State to deny all export license applications involving, directly or indirectly, DELFT INSTRUMENTS N.V., OIP INSTRUBEL, and FRANKS & CO. OPTIK GMBH. This action also precludes the use in connection with such entities of any exemptions from license or other approval requirements included in the ITAR (22 CFR parts 120-130). It will remain in effect until the Commerce Department denial order is lifted.

Dated: February 26, 1990.

William B. Robinson,

Director, Office of Defense Trade Controls, Bureau of Politico-Military Affairs.

[FR Doc. 91-4880 Filed 2-28-91; 8:45 am]

BILLING CODE 4710-25-M

**DEPARTMENT OF TRANSPORTATION****Coast Guard**

[CGD 91-014]

**Coast Guard Academy Advisory Committee; Meeting**

**ACTION:** Open meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Coast Guard Academy Advisory Committee to



be held in Hamilton Hall at the U.S. Coast Guard Academy, New London, CT, on Monday, Tuesday and Wednesday March 25 through 27, 1991. Open sessions on Monday will be from 9:30 a.m. to 10:30 a.m. and 1:15 p.m. to 2:15 p.m. The open session on Tuesday will be held from 2:30 p.m. to 3:15 p.m. and the open session on Wednesday will be held from 9 a.m. to 9:45 a.m. The agenda for the meeting consists of the following items: 1. Recruiting and Admissions, 2. Athletics, 3. Faculty and Curricula, 4. Library.

The Coast Guard Academy Advisory Committee was established in 1937 by Public Law 75-38 to advise on the course of instruction at the Academy and to make recommendations as necessary. Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to attend or present oral statements at the meeting should notify the U.S. Coast Guard Academy not later than March 8, 1991. Any member of the public may present a written statement to the Committee at any time.

**FOR FURTHER INFORMATION CONTACT:**  
Dr. William A. Sanders, Dean of Academics, U.S. Coast Guard Academy, New London, CT 06320, ph (203) 444-8275.

Issued in Washington, DC, on February 25, 1991.

G.D. Passmore,

Rear Admiral, U.S. Coast Guard, Chief, Office of Personnel and Training.

[FR Doc. 91 Filed 2-28-91; 8:45 am]

BILLING CODE 4910-14-M

[CGD8 90-02]

#### Lower Mississippi River Waterway Safety Advisory Committee; VTS Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is

hereby given of the VTS Subcommittee of the Lower Mississippi River Waterway Safety Advisory Committee meeting. The meeting will be held on Tuesday, March 26, 1991. The meeting will be held at the Crescent River Port Pilots office, 409 Belle Chasse Hwy. South, Belle Chasse, LA 70037. The meeting is scheduled to begin at 9 a.m. The agenda for the meeting consists of the following items: 1. Call to order, 2. Recommendations for a proposed New Orleans Vessel Traffic Service, 3. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander C. T. Bohner, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-3074.

Dated: February 20, 1991.

J.M. Loy,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 91-4891 Filed 2-28-91; 8:45 am]

BILLING CODE 4910-14-M

#### Federal Highway Administration

#### Environmental Impact Statement: Pulaski County, AR

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Pulaski County, Arkansas.

**FOR FURTHER INFORMATION CONTACT:**  
H.C. Wieland, Division Administrator,

Federal Highway Administration, 3128 Federal Office Building, Little Rock, Arkansas 72201; or John Isom, Ecologist, Environmental Division, Arkansas State Highway and Transportation Department, P.O. Box 2261, Little Rock, Arkansas 72203, Telephone (501) 569-2281. Doug Ford or Don McChesney, Engineers, Public Works/Engineering Division, City of Little Rock, 701 West Markham, Little Rock, Arkansas 72201, Telephone (501) 371-4820.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the City of Little Rock and the Arkansas State Highway and Transportation Department, will prepare an EIS on a proposal to construct an expressway connecting I-30 and U.S. 65/167 serving southern Little Rock and Pulaski County, Arkansas.

The proposal will help solve the problem of a lack of continuous arterial streets and general roadway system development in a part of the City and County that is experiencing growth at a more rapid rate than previously anticipated. The proposed facility will meet at least three objectives for this area. The objectives are:

1. Providing a continuous east-west principal arterial route connecting the Pine Bluff Freeway (Highway 65/167 at Pratt Road with the I-30/I-430 interchange.

2. Providing at least one additional, either principal or minor arterial, route traversing the study area to maintain the principle of continuity and spacing.

3. Improving the utility of existing arterial streets crossing the study area in a north-south direction.

Alternatives to be considered are:

1. The "Do-Nothing" Alternative where roads are constructed according to the regional plan with the exception of the proposed facility.

2. The "Reconstruction" Alternative where roads on the regional plan are upgraded to handle traffic forecast for the proposed facility.

3. The "Mass Transit" Alternative.



4. The "New Location" Alternative considering several different alignments.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies and to private organizations, including conservation groups and groups of individuals who have voiced opposition to the project in the past and to major Arkansas newspapers. Also, a series of public involvement sessions have been held in a mobile trailer situated directly in the areas to be affected. In addition, a public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting has been held.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning Construction. The regulations implementing Executive Order 1372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 19, 1991.

Charles Boyd,

Field Operations Engineer, Little Rock, Arkansas.

[FR Doc. 91-4813 Filed 2-28-91; 8:45 am]

BILLING CODE 4910-22-M

## Research and Special Programs Administration

[Docket No. P-90-5W; Notice 1]

### Transportation of Natural and Other Gas by Pipeline; Petition for Waiver by Texas Gas Transmission Corp.

Texas Gas Transmission Corporation (Texas Gas) has petitioned the Research and Special Programs Administration for a waiver from compliance with 49 CFR 192.179(a)(2), which requires each point on the pipeline in a Class 3 location to be within 4 miles of a sectionalizing block valve. Texas Gas is adding a 13.06-mile section of 36-inch outside diameter loop line along its existing main line system in Jefferson County, Kentucky and seeks permission to align placement of valves on the new 36-inch line concurrent with valves on two existing 26-inch lines.

The 3 existing valve sites (BV-55A, BV-56, and BV-56A) are shown on

Emergency Response Location Drawing Nos. SK-871-PL, SK-872-PL and SK-873-PL which are available in the Docket. Two proposed sites for the new line at the 579.41 (BV-56) and 588.28 (BV-56A) mile locations require a waiver because between them they contain an 0.87-mile section of pipeline that is more than 4 miles from a valve (between the 583.41 and 584.28 mile points) as required by the Class 3 location regulation. The BV-56 valve site is in a Class 3 location and is surrounded by a trailer park. The BV-56A site is within a Class 1 area. Class 3 locations are characterized (see 49 CFR 192.5 for class location definitions) as areas with 46 or more buildings per mile of pipeline. Class 1 locations have 10 or less buildings within the prescribed area. The 13.06-mile section of new construction is located within Class Locations 1, 2, and 3 and includes farmland, single-family housing areas, and urban development.

In preparing justification for a waiver, Texas Gas conducted an exercise wherein they dispatched crews from the Jeffersonton Compressor Station to potential valve sites along the pipeline. The purpose was to determine expected response time if emergency shut-in of a section of pipeline were needed. They reported that, dependent upon the location of the cause of the emergency, driving time to the sites required by the regulation exceeded that to Texas Gas' proposed sites by 3 to 16 minutes and required 2 to 4 more response employees due to the increased number of sites. The public could be subject to exposure from escaping gas the additional response time. We believe the company finding seems reasonable.

Strict adherence to the regulation would require Texas Gas to locate valves at the 575.71 and 583.71 mile markers. The 575.71 mile marker is located in a small area between 2 public roads that is insufficient in size for a block valve location. Furthermore, the area along the pipeline route in an easterly direction from the site is zoned for subdivision development. Relocating the site in a westerly direction would violate the 4-mile limit established in the regulation. The other regulation site, at the 583.71 mile location, borders on an existing subdivision. Although constructing a valve site in a subdivision might not endanger the residents, it would require additional land disturbance and expose residential areas to irritating loud noises if a blow-down became necessary. Photographs of existing and potential sites are available in the Docket.

Texas Gas estimates that, if an emergency occurs along the 13.06-mile

section of line, deliveries to consumers would be diminished by 72.2 to 171.3 mmcf gas per day due to reduced system flexibility if valves are installed at the sites required by regulation rather than at existing sites. If such an emergency situation occurs and a section of line is shut-in, the Company can cross-connect the remaining lines and maintain the higher delivery level if the valves are located adjacent to the valves at existing sites. The option to cross-connect is not available at the site required by regulation.

Texas Gas estimates an additional cost of approximately \$281,000 to complete the construction of facilities under their proposal compared to constructing the required sites. The additional cost occurs as a result of the additional cross-over valves and piping at the BV-56 and BV-56A sites. Texas Gas justifies the increased expenditure on the basis of a greater degree of public convenience and safety.

Because the proposed valve placement coincides with existing valves currently qualified to operate on the pipelines adjacent to the proposed line, it seems reasonable to waive the requirements of § 192.179(a)(2) for the new line. There is no reason to anticipate a lesser level of safe performance for the proposed line than for the existing lines. Granting the waiver would provide uniform treatment for this section of line take as a unit. There does not appear to be any additional risks to the population in proximity to the line. In view of these reasons, and those stated in the foregoing discussion, RSPA proposes to grant the waiver.

Interested parties are invited to comment on the proposed waiver by submitting in duplicate such data, views, or arguments as they may desire. Comments should identify the Docket and Notice numbers and be submitted to the Dockets Unit, room 8417, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590.

All comments received before April 1, 1991 will be considered before final action is taken. Late filed comments will be considered so far as practicable. All comments and other docketed material will be available for inspection and copying in room 8419 between the hours of 8:30 a.m. and 5 p.m. before and after the closing date. No public hearing is contemplated, but one may be held at a time and place set in a Notice in the Federal Register if requested by an interested person desiring to comment at a public hearing and raising a genuine issue.



Issued in Washington, DC on February 26, 1991.

**George W. Tenley, Jr.,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 91-4939 Filed 2-28-91; 8:45 am]

BILLING CODE 4910-60-M

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

[AC-14; OTS No. 1467]

#### **Archer Federal Savings and Loan Association, Chicago, IL; Final Action; Approval of Conversion Application**

Notice is hereby given that on February 11, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Archer Federal Savings and Loan Association, Chicago, Illinois, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601-4360.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 91-4921 Filed 2-28-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-5; OTS No. 0295]

#### **Citizens Federal Savings and Loan Association of Rome, Rome GA; Final Action; Approval of Conversion Application**

Notice is hereby given that on February 11, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Citizens Federal Savings and Loan Association of Rome, Rome, Georgia for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 91-4922 Filed 2-28-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-15; OTS No. 6003]

#### **First Federal Bank of Northwest GA, Federal Savings Bank, Cedartown, Georgia; Final Action; Approval of Conversion Application**

Notice is hereby given that on February 7, 1991, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of First Federal Bank of Northwest Georgia, Federal Savings Bank, Cedartown, Georgia, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Atlanta District Office, 1475 Peachtree Street, NE., Atlanta, Georgia 30348-5217.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 91-4923 Filed 2-28-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-13; OTS No. 6656]

#### **First Federal Savings and Loan Association of Leitchfield; Final Action; Approval of Conversion Application**

Notice is hereby given that on February 12, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Leitchfield, Leitchfield, Kentucky, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Cincinnati, Ameritrust Center, 525 Vine Street, Cincinnati, OH 45201-5364.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 91-4924 Filed 2-28-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-7; OTS No. 2553]

#### **First Federal Savings Bank, Winston-Salem, NC; Final Action; Approval of Conversion Application**

Notice is hereby given that on February 15, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of First Federal Savings Bank, Winston-Salem, North Carolina for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW, Washington, DC 20552, and District Director, Office of Thrift Supervision of Atlanta, 1475 Peachtree Street, NE, Atlanta, Georgia 30309.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 91-4925 Filed 2-28-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-10; OTS No. 3224]

#### **First Federal Savings Bank, SD; Final Action; Approval of Conversion Application**

Notice is hereby given that on February 11, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of First Federal Savings Bank, Watertown, South Dakota for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW, Washington, DC 20552, and District Director, Office of Thrift Supervision of Des Moines, Regency West 2, Suite 300, 1401 50th Street, Des Moines, IA 50265.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 91-4926 Filed 2-28-91; 8:45 am]

BILLING CODE 6720-01-M



**[AC-6; OTS No. 2588]****Great American Federal Savings Bank, F.S.B., Wauwatosa, WI; Final Action; Approval of Conversion Application**

Notice is hereby given that on February 12, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Great American Federal Savings Bank, F.S.B. Wauwatosa, Wisconsin for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Regional Director, Office of Thrift Supervision of Chicago, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601-4360.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-4927 Filed 2-28-91; 8:45 am]

BILLING CODE 6720-01-M

**[AC-12; OTS No. 4868]****Great Valley Savings Association, Reading, PA; Final Action; Approval of Conversion Application**

Notice is hereby given that on February 11, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Great Valley Savings Association, Reading, Pennsylvania, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW, Washington, DC 20552, and District Director, Office of Thrift Supervision of Pittsburgh, One Riverfront Center, Twenty Stanwix

Street, Pittsburgh, Pennsylvania 15222-4893.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-4928 Filed 2-28-91; 8:45 am]

BILLING CODE 6720-01-M

**[AC-8; OTS No. 2494]****Inter-City Federal Savings Bank, Louisville, MS; Final Action; Approval of Conversion Application**

Notice is hereby given that on February 11, 1991, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Inter-City Federal Savings Bank, Louisville, Mississippi for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Dallas District Office, 122 Carpenter Freeway, Irving Texas 75039.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-4929 Filed 2-28-91; 8:45 am]

BILLING CODE 6720-01-M

**[AC-9; OTS No. 2644]****Perpetual Federal Savings Bank, Urbana, OH; Final Action; Approval of Conversion Application**

Notice is hereby given that on February 12, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority

delegated to him, approved the application of Perpetual Federal Savings Bank, Urbana, Ohio, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1770 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Cincinnati District Office, Ameritrust Center, 525 Vine Street, Cincinnati, Ohio 45201-5364.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-4930 Filed 2-28-91; 8:45 am]

BILLING CODE 6720-01-M

**[AC-11; OTS No. 2714]****Western Federal Savings and Loan Association, Sparta, WI; Final Action; Approval of Conversion Application**

Notice is hereby given that on February 12, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Western Federal Savings and Loan Association, Sparta, Wisconsin for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Regional Director, Office of Thrift Supervision of Chicago, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601-4360.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-4931 Filed 2-28-91; 8:45 am]

BILLING CODE 6720-01-M



# Sunshine Act Meetings

Federal Register

Vol. 56, No. 41

Friday, March 1, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL ENERGY REGULATORY COMMISSION

### Notice of Closed Meeting

February 26, 1991.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-4109), 5 U.S.C. 552b:

**DATE AND TIME:** February 27, 1991, 9:00 a.m.

**PLACE:** 825 North Capitol Street NE, Room 9306, Washington, DC 20426.

**STATUS:** Closed.

### MATTERS TO BE CONSIDERED:

- (1) Docket No. RP88-68-000, *et al.*, Transcontinental Gas Pipe Line Corporation.
- (2) Docket No. IN89-1-000, Transcontinental Gas Pipe Line Corporation.
- (3) Docket No. IN89-1-001, Transcontinental Gas Pipe Line Corporation.
- (4) Transcontinental Gas Pipe Line Corporation, Sulpetro Limited Natural Gas.
- (5) Docket No. TA85-3-29-009, *et al.*, Transcontinental Gas Pipe Line Corporation.

### CONTACT PERSON FOR MORE INFORMATION:

Lois D. Cashell, Secretary, Telephone (202) 208-0400.

The following Commissioners voted that agency business requires the holding of a closed meeting on less than the seven days' notice required under the Government in the Sunshine Act:

Chairman Allday  
Commissioner Trabandt  
Commissioner Moler  
Commissioner Langdon  
Commissioner Terzic

Lois D. Cashell,

Secretary.

[FR Doc. 91-5081 Filed 2-27-91; 4:00 pm]

BILLING CODE 6717-01-M

## FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 91-4283.

### PREVIOUSLY ANNOUNCED DATE AND TIME:

Thursday, February 28, 1991, 2:00 p.m., Meeting Open to the Public.

The above meeting will convene at 10:00 a.m., and not 2:00 p.m. as previously stated.

The following item had been added to the agenda:

Future Meetings

**DATE AND TIME:** Tuesday, March 5, 1991, 2:00 p.m.

**PLACE:** 999 E Street NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

### ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and title 28, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

### PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Hilda Arnold,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 91-5046 Filed 2-27-91; 3:04 am]

BILLING CODE 6715-01-M

## FEDERAL RESERVE SYSTEM: BOARD OF GOVERNORS

**TIME AND DATE:** 10:00 a.m., Wednesday, March 6, 1991.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

**STATUS:** Open.

### MATTERS TO BE CONSIDERED:

#### Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed revision of Regulation P (Minimum Security Devices and Procedures for Federal Reserve Banks and State Member Banks) following zero-based review. (Proposed earlier for public comment; Docket No. R-0688.)

#### Discussion Agenda

2. Publication for comment of proposed amendments to Regulation CC (Availability of Funds and Collection of Checks) regarding certain Federal Reserve Bank services to be offered in a same-day settlement environment.

3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for \$5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551

### CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204

Dated: February 27, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-4983 Filed 2-27-91; 10:44 am]

BILLING CODE 6210-01-M

## FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

**TIME AND DATE:** Approximately 10:30 a.m., Wednesday, March 6, 1991, following a recess at the conclusion of the open meeting.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

**STATUS:** Closed.

### MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

### CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 27, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-4984 Filed 2-27-91; 10:44 am]

BILLING CODE 6210-01-M

## RESOLUTION TRUST CORPORATION

### Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:06 p.m. on Tuesday, February 26, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to the resolution of failed thrift institutions.

In calling the meeting, the Board determined, on motion of Director C.C.



Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr. and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street NW., Washington, DC.

Dated: February 26, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,  
Executive Secretary.

[FR Doc. 91-4995 Filed 2-27-91; 10:51 am]

BILLING CODE 6714-01-M



# Registered Federal Reporter

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**Friday  
March 1, 1991**

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## **Part II**

### **Department of Health and Human Services**

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**Health Care Financing Administration**

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**42 CFR Parts 400, et al.**

**Medicare and Medicaid Programs; OBRA  
'87 Conforming Amendments; Final Rule**



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

42 CFR Parts 400, 405, 406, 408, 409, 410, 413, 416, 417, 424, 430, 431, 435, 436, 440, 441, 447, 455, 482, 485, 489, 491, and 498

[BPD-484-FC; RIN 0938-AD92]

### Medicare and Medicaid Programs; OBRA '87 Conforming Amendments

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule with comment period.

**SUMMARY:** These regulations amend certain sections of Medicare and Medicaid rules to reflect 15 self-executing provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) and changes made by sections 102, 103, and 211(b) of the Medicare Catastrophic Coverage Act of 1988 (MCCA), section 608(d)(3)(G) of the Family Support Act of 1988 (Pub. L. 100-485), and sections 6113 and 6301 of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89). They also clarify related rules.

The amendments are needed to make HCFA rules consistent with current provisions of law and to ensure that users of the regulations are not confused by outdated provisions or unclear language. This document also makes technical amendments, primarily to correct internal cross-references, make nomenclature changes, and revise an outdated definition.

#### DATES:

**Effective date:** These regulations are effective April 1, 1991.

**Comment date:** We will consider comments received by April 30, 1991.

**ADDRESSES:** Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-484-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC

or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-484-FC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks

after publication of this document, in room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

**FOR FURTHER INFORMATION CONTACT:** Luisa V. Iglesias (202) 245-0383.

**SUPPLEMENTARY INFORMATION:** Of the 15 provisions noted under SUMMARY, seven affect the Medicare program, and eight, the Medicaid program. Of the seven Medicare provisions, 3 expand coverage of services, and the other four—

- Make the Part B deductibles and coinsurance applicable to ambulatory surgical center (ASC) physician services.
- Remove the requirement, that as a condition for a hospital to participate in Medicare, hospital inpatients other than those who are Medicare beneficiaries must be "under the care of a physician";
- Extend, for one more year, the basis for computing the supplementary medical insurance (SMI) premiums and the "hold harmless" provision applicable when there is no cost-of-living increase in social security monthly benefits; and
- Change the method for determining payment for hospital outpatient radiology services and other diagnostic procedures.

Of the eight provisions that affect Medicaid, two expand coverage of services, three deal with waivers of the State plan requirements that are set forth in section 1902 of the Act, one requires disregard of certain supplemental security income (SSI) benefits for beneficiaries in institutions, and one pertains to organ transplant procedures. The eighth provision amends title XVI of the Act with respect to monthly SSI payments to beneficiaries in medical institutions.

Sections 103 and 211 of the MCCA affect the determination of Medicare Part A and Part B premiums, and the date for promulgation of the Part A premium.

The changes we have made in the rules, to reflect these self-executing provisions of the law and to clarify other related regulations, are discussed below. References to "the Act" are to the Social Security Act. Sections without specific statutory citation are sections of OBRA '87.

### I. Expansion of Medicare Coverage

#### A. Services of Podiatrists

##### 1. Statutory Provision

Section 4039(b) amends paragraph (3) of section 1861(r) of the Act (definition

of physician) to remove the requirement that the activities of a doctor of podiatric medicine "be consistent with the policy of the institution with respect to which he performs them" for purposes of the provisions of the Act that pertain to utilization review, home health services, outpatient physical therapy, and certification by a physician as to a patient's need for care.

##### 2. Changes in the Regulations

a. *To reflect changes in the law.* This section required us to remove all provisions stating that a podiatrist's activities must be "consistent with the policy of the institution \* \* \*" which appeared in §§ 409.42(d), 424.11(e), 424.22(a), and 424.24(c). (Previous §§ 405.1625, 405.1633, and 405.1634 were redesignated as §§ 424.11, 424.22, and 424.24 by final rules published on March 2, 1988 at 43 FR 6629.) The revised rules specify that a doctor of podiatric medicine may perform only those plan of treatment functions that are consistent with the functions he or she is authorized to perform under State law.

b. *Technical and editorial revisions of pacemaker rules.* In amending part 409, we noted that the rules on cardiac pacemakers and pacemaker leads contained repetition and unclear cross-references. In order to improve readability and ease of comprehension, we revised §§ 409.19 and 410.64 to provide a more logical organization, clarify cross-references, and simplify presentation. No substantive change is intended.

#### B. Outpatient Psychiatric Services

##### 1. Statutory Provisions

Sections 4070 (a)(1) and (c)(1) of OBRA '87 amended section 1833(d) of the Act to increase the dollar limit for expenses incurred during a calendar year for outpatient psychiatric treatment from \$312.50 to \$562.50 for 1988, and to \$1,375 for subsequent calendar years. Section 6113 of OBRA '89 further amended section 1833(d) of the Act to remove the dollar limit but retain the 62½ percent limit, to be applied to "incurred expenses".

##### 2. Changes in the Regulations

The provisions discussed are above reflected in changes to §§ 410.152 and 410.155.

#### C. Comprehensive Outpatient Rehabilitation Facility (CORF) Services

##### 1. Statutory Provisions

Section 4078 amends section 1862(cc) of the Act to provide that Medicare Part B may pay for physical therapy,



occupational therapy, and speech pathology services furnished by a CORF outside its own premises if—

- The plan of treatment requirement is met; and
- The services are not otherwise paid for under Medicare.

Under previous law, all CORF services (except a single home visit if necessary to evaluate the impact of the home environment on the rehabilitation goals) had to be furnished on the premises of the CORF.

## 2. Changes in the Regulations

To reflect the section 4078 provision, we have amended §§ 410.105(b) and 485.58.

## II. Medicare: Miscellaneous Changes

### A. "Under the Care of a Physician"

#### 1. Statutory Provision

Section 1861(e) of the Act sets forth the conditions an institution must meet in order to participate in Medicare as a hospital. One of those conditions, which has been in effect since the beginning of the program, is that the institution have a requirement that each inpatient be under the care of a physician. Section 4009(f) amends section 1861(e)(4) to make that requirement applicable only to patients who are Medicare beneficiaries.

#### Change in the Regulation

This amendment required a change in § 482.12 of the conditions of participation for hospitals.

### B. Medicare Premiums

#### 1. Statutory Provisions

a. *Medicare Part A premiums.* Section 103 of the MCCA amends section 1818 of the Act to change the promulgation date and the formula for computing the monthly premium for those individuals who can become entitled to Medicare Part A only by paying a premium.

b. *Part B premiums.* The provision for making the SMI premium equal to 50 percent of the actuarial rate for the aged, that is, 50 percent of the estimated expenditures for services furnished to enrollees age 65 and over (section 1839(e) of the Act) was extended through 1989 by section 4080 of OBRA '87, and through 1990 by section 6301 of OBRA '89.

c. *Hold harmless provision.* The "hold harmless" provision limits the premium increase when there is no cost-of-living increase in social security monthly benefits (section 1839(f) of the Act). This provision was extended for one more year by section 4080 of OBRA '87, and made permanent by section 211(b) of the MCCA.

Under this provision, for individuals who are eligible for Social Security cash benefits for both November and December of a calendar year, there are limits on premium increases. The Part B premiums of those individuals cannot be increased to the point where, because of that increase, the Social Security cash benefit paid for December (the check received in January) is less than the benefit paid for November (the check received in December).

In amending section 1839(f), of the Act, section 211(b) changed "monthly benefit" to "amount of benefits payable". "Monthly benefit" had always been interpreted to mean the amount to which the beneficiary was entitled, regardless of how much was actually paid. The change to "amount payable" permits application of the hold harmless provision even if the payable benefit is also reduced because of government pension offset or workers' compensation payments.

## 2. Changes in the Regulations

In order to avoid confusion, the section 1818 changes made by the MCCA and the section 1839 changes made by the three cited laws are reflected in these final regulations through amendments to §§ 406.22 and 408.20, respectively.

### C. Deductibles and Coinsurance: ASC Services

#### 1. Statutory Provisions

Section 9343(e) of OBRA '86, as amended by section 4085(i)(21)(D) of OBRA '87, amended section 1833 (a) and (b) of the Act to rescind the exemption of ASC facility services from the Part B annual deductible and coinsurance. OBRA '86 did not specify an effective date for this provision. However, on the basis of congressional advice, we determined that the intent was to make the provision effective for services furnished on or after July 1, 1987.

Section 4054 of OBRA '87 was later renumbered 4055 because of duplication of 4052. This section, as amended by section 411(f)(12) of the MCCA, amended sections 1833 (a) and (b) of the Act to make the Part B deductible and coinsurance provisions applicable to ASC physician services, that is, to physician services performed (in an ASC or in a hospital on an outpatient basis) in connection with surgical procedures approved for reimbursement in ASCs. This change is effective for services furnished on or after April 1, 1988.

## 2. Changes in the Regulations

In order to reflect both the OBRA '86 and the OBRA '87 provisions, and to clarify some confusing aspects of the rules that pertain to ASC services, we have amended §§ 410.152, 410.155 and 410.160 and made the following changes in Part 416:

a. Designated the sections under 5 subparts instead of 3 to facilitate reference to particular aspects.

b. In Subpart A—

- Revised § 416.1 to provide a single comprehensive "Basis and scope" section applicable to the whole part.

- Corrected cross reference in § 416.2.

- Removed § 416.3, as inconsistent with current law, which makes the deductible and coinsurance provisions applicable to ASC services.

c. In subpart B—

Revised the heading to reflect the fact that the "conditions for coverage" are being designated under a new subpart C.

- Removed § 416.20 as duplicative of revised § 416.1.

- Revised § 416.25 and added a new § 416.26 to separate the basic requirements from the procedures for qualifying to participate in Medicare as an ASC.

- Revised § 416.30 to reflect the changes in the deductible and coinsurance provisions of the law, to conform paragraph (f) to the changes being made in § 416.120, as discussed later in this preamble, to change "prospectively" to "next" in paragraph (f)(1) to make clear when the agreement is effective, and to correct internal cross-references.

- In § 416.35, changed future tense to present indicative for consistency with the rest of these rules.

- Moved the content of § 416.39 (deeming of compliance) to the new § 416.26, since "deeming" is one way to qualify to participate as an ASC.

- Designated the "scope of benefits" provisions under a new subpart D, and the "payment" provisions under a new subpart E.

d. In the newly designated subpart D, revised §§ 416.60 and 416.61—

- To eliminate repetition and provide paragraph headings to guide the reader;

- Make clear that, although payment differs depending on where the services are furnished, the scope is the same;

- Reflect the fact that the provisions apply not just to ASC services but also to services furnished in hospital outpatient departments; and

- To specify that intra-ocular lenses are covered.

e. In the redesignated subpart E—



• Removed § 416.100 as duplicative of revised § 416.1.

• Removed § 416.110 as inconsistent with current law.

• Revised § 416.120 as follows:

a. To remove paragraph (b) because the HAASC classification, originally established to make clear that a hospital component furnishing ambulatory surgery could be owned and operated as part of the hospital, does not represent a valid distinction. The fact is that all Medicare participating ASCs, regardless of whether they are "independent" or owned by a hospital, must meet the same participation requirements and are paid in the same manner. A hospital component that furnishes ambulatory surgical services may be considered by the hospital to be part of its outpatient department or a separate entity. If the component is considered to be part of the hospital outpatient department, the ambulatory surgical services are covered and paid for as hospital outpatient services. If the component is considered a separate entity, it must be certified as an ASC and is paid under the ASC rules.

b. To clarify policy on payment for multiple surgical procedures performed at a single operative session (paragraph (c)).

• Made minor editorial changes in § 416.125.

• In §§ 416.130 and 416.140, changed future tense to present indicative for consistency with the rest of these rules, and made clarifying editorial changes in § 416.140.

#### *D. Application of Blood Deductible*

##### *1. Statutory Provisions*

a. Section 102 of the MCCA amends section 1813(a)(2) of the Act to provide that the Medicare Part A blood deductible shall be reduced to the extent that a blood deductible has been applied under Medicare Part B.

b. Section 608(d)(3)(G) of the Family Support Act of 1988, enacted October 13, 1988, amends section 104 of the MCCA to add a new subsection (d)(7) which, in turn, amends section 1833(b) of the Act to provide that the Part B blood deductible shall be reduced to the extent that a blood deductible has been applied under Medicare Part A.

##### *2. Changes in the Regulations*

a. In § 409.87, we have revised paragraphs (a)(3) and (a)(6).

b. In § 410.161, we have made a conforming technical amendment, which appears at the end of the rules text with other technical amendments.

c. In part 489, we have revised section 489.31.

#### *E. Partial Hospitalization Services*

##### *1. Statutory Provisions*

Section 4070(b), as amended by section 411(h)(1)(B) of the MCCA, amends the definitions section of the Medicare title as follows:

a. Amends section 1861(s)(2)(B) of the Act to provide that partial hospitalization services incident to physician services, furnished by a hospital to its outpatients, are covered as medical and other health services.

b. Adds to section 1861 a new subsection (ff) to—

1. Define "partial hospitalization services" as a program that is furnished by a hospital to its outpatients and is a distinct and organized intensive ambulatory treatment program offering less than 24-hour-daily care;

2. Specify eight services included in partial hospitalization services;

3. Provide that the Secretary may add other services, with the exception of meals and transportation;

4. Require that the services be—

• Reasonable and necessary for the diagnosis or active treatment of the individual's condition;

• Reasonably expected to improve or maintain the individual's condition and functional level and to prevent relapse or hospitalization; and

• Furnished pursuant to such guidelines relating to frequency and duration of services as are established by regulation, taking into account accepted norms of medical practice and the reasonable expectation of patient improvement; and

5. Require that the services be prescribed by a physician under a written individualized plan of treatment that (1) is established and periodically reviewed by a physician, in consultation with appropriate staff participating in the program and (2) sets forth the physician's diagnosis, the type, amount, duration, and frequency of the services and the goals for treatment under the plan.

At this time we do not consider it desirable to establish by regulation specific limits on the frequency and duration of these services. We believe that the physician who establishes and reviews the plan of treatment can best determine what is necessary and appropriate for each patient.

Accordingly, the guidelines in these rules make the physician responsible for specifying how often and for how long partial hospitalization services are to be furnished to each patient. If experience indicates the need to regulate this aspect, we would follow the notice and opportunity for comment procedures. In the meantime, we plan to seek a

technical amendment that would authorize but not require the Secretary to issue additional guidelines. Section 4070(b) also amends section 1835(a)(2) by adding a new subparagraph (F) to require that, as a condition for Medicare payment, a physician certify that—

a. The individual would require inpatient psychiatric care in the absence of partial hospitalization services;

b. An individualized written plan of care has been established and is reviewed periodically by a physician; and

c. The services are or were furnished while the individual is or was under the care of a physician.

(Physician certification is not required for any other "incident to" services.)

##### *2. Changes in the Regulations*

a. In § 410.2 we have inserted a definition of "partial hospitalization services".

b. In § 410.10 we have made a conforming change in paragraph (c).

c. In § 410.27, we have added a new paragraph (d) to specify the conditions for coverage of these services. This paragraph would be amended later if it is found necessary to establish limits on the frequency and duration of these services.

d. In § 424.24, we have made conforming changes in paragraphs (a) and (b) and added a new paragraph (e) to set forth the physician certification and plan of treatment requirements for these services.

#### *F. Delayed Action Amendment*

Section 4033 amends section 226(f) of the Act to permit months from a previous period of disability benefit entitlement to be counted in determining when Medicare Part A may begin for an individual who becomes disabled more than 60 months (84 months if previous entitlement was as a disabled child, widow, or widower) after the month in which the previous period of disability benefit entitlement ended. The earlier months of disability may be counted only if the physical or mental impairment that is the basis for the current disability is the same as or directly related to the impairment that was the basis for the previous period of entitlement to disability benefits.

The amendment applies only if the previous period of disability benefit entitlement ended on or after February 21, 1988. This, in conjunction with the requirement that the previous period must have ended more than 60 or 84 months before the onset of the current disability, means that the earliest anyone could qualify for Medicare Part



A under the section 4033 amendment is March 1993, or March 1995 if previous entitlement was as a disabled child, widow, or widower.

We have made no changes in the regulations because we anticipate that further changes will be made in the law before 1993.

### III. Expansion of Medicaid Coverage

#### A. Services of Dentists

##### 1. Statutory Provision

Section 4103 amends section 1905(a)(5) of the Act to require the State Medicaid plan to include medical and surgical services furnished by a dentist, if under State law those services may be performed either by a doctor of medicine or a doctor of dental surgery or dental medicine, and would be considered physicians' services if furnished by a physician.

The requirement is effective for calendar quarters beginning on or after January 1, 1988. However, the law makes special provision for States that must seek legislative action (for purposes other than appropriation of funds) before they can amend their State plans. In those circumstances, the State plan would not be considered to be out of compliance with the title XIX requirements until the first day of the first quarter that begins after the close of the first regular legislative session that begins after enactment of the provision (December 22, 1987).

##### 2. Changes in the Regulations

This additional Medicaid coverage is shown in revised § 440.50.

#### B. Clinic Services

##### 1. Statutory Provision

Section 4105 amends the definition of "clinic services" (section 1905(a)(9) of the Act) to clarify that the term includes services furnished outside the clinic, by clinic personnel, to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.

##### 2. Changes in the Regulations

This provision required that we amend § 440.90, which defines "clinic services".

We are amending the clinic definition to reflect the recent legislative change, and to clarify that this represents an exception to the general coverage requirement for services to be furnished on the premises of the clinic. Clinic services have always been limited to people who go to the clinic (or a satellite location) and get the services onsite. In regulations this result was achieved by virtue of defining the services as

furnished "to outpatients." The outpatient definition (§ 440.2) originally was written in terms of a patient who is receiving services "at an organized medical facility." In BERC-513-F, a regulation which grew out of the regulatory reform effort, we revised the outpatient definition from a patient receiving services "at" an organized medical facility to a patient "of" an organized medical facility (52 FR 47934, December 17, 1987). This change had the unintended effect of creating confusion in the context of the clinic benefit over whether services still had to be furnished on the premises of a clinic in order to be covered under the clinic benefit. It was never our intention to rescind the onsite requirement, and we are not aware of any changes made by States in clinic coverage as a result of the revision to the outpatient definition. Accordingly, we are correcting our error in this regulation. We would note that, in enacting the recent provision for coverage of clinic services for homeless individuals, Congress has now established an explicit exception to the normal requirement that clinic services be furnished onsite in order to be covered, thus ratifying the current requirement that other services must be furnished onsite.

### IV. Medicaid: Waivers of State Plan Requirements

#### A. Freedom of Choice of Providers of Family Planning Services

##### 1. Statutory Provisions

Section 1915(b) of the Act, which authorizes the Secretary to waive State plan requirements set forth in section 1902 of the Act, specifies that no such waiver may restrict an individual's freedom of choice of providers of family planning services.

Subsequent amendments to the Act have retained or extended this rule, as shown below.

a. Section 9508(a) of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 amended section 1915 of the Act to provide, effective April 7, 1986, that a State—

- Could furnish case-management services as medical assistance, with a waiver of the State-wideness and comparability of services requirements; but

- Could not, with respect to an individual receiving case-management services, restrict that individual's freedom of choice of providers of family planning services.

b. OBRA '87 sections 4113 (c)(1) and (c)(2) amend sections 1902(a)(23) and 1902(e)(2)(A) of the Act, respectively, to

apply this rule effective for services furnished on or after July 1, 1988.

The amendment to section 1902(a)(23) of the Act provides that a Medicaid recipient enrolled in a primary care case-management system, an HMO, or a similar entity, may not be restricted in his or her freedom of choice of providers of family planning services.

The amendment to section 1902(e)(2)(A) of the Act excludes family planning services from the restriction imposed on HMO enrollees who lose Medicaid eligibility but are deemed to continue to be eligible for the remainder of a minimum HMO enrollment period. The restriction is that the enrollee is eligible only for services furnished by the HMO. Under the amendment, the enrollee is free to seek family planning services from any qualified provider.

##### 2. Changes in the Regulations

These provisions required us to amend §§ 431.51 and 435.212. In § 431.51(b)(1), we have added language to counteract a misunderstanding that has arisen in the past: freedom of choice does not obligate a Medicaid provider to furnish services to every recipient. Within specified limits, a recipient may seek to obtain services from any qualified provider, but the provider determines whether to furnish services to the particular recipient. This is consistent with the language of § 1902(a)(23) of the Act; " \* \* \* who undertakes to provide him such services."

#### B. Extension of Special Waivers to the Northern Mariana Islands

##### 1. Statutory Provision

Section 4116 amends section 1902(j) of the Act to extend the waiver provisions of that section to the Northern Mariana Islands.

##### 2. Changes in the Regulations

In § 431.56, we have added "Northern Mariana Islands" where appropriate.

#### C. Time Allowed for Decision on Waiver Requests

##### 1. Statutory Provision

Section 4118(l) amends section 1915(h) of the Act to provide that—

- A request for continuation of a section 1915 waiver shall be deemed granted unless, within 90 days, the Secretary denies the request or requests additional information; and

- If the Secretary requests additional information, the 90 days allowed for the Secretary to reach a decision begin anew when he or she receives the additional information. This is



consistent with the time frames already applicable to initial waiver requests.

## 2. Changes in the Regulations

This provision highlighted the need to set forth the procedures that HCFA follows in processing waiver requests. This need is met by adding a new § 430.25, in which paragraph (f) reflects the amendment discussed above. Except for paragraph (f), the new § 430.25 is merely a codification of practice that has long been in effect but had not been set forth in regulations.

We also noted that Subpart B of Part 431 (which deals with exceptions and waivers) needed clarification and updating. The specific changes in Subpart B include the following:

a. A new § 431.40 to set forth the basis and scope of the subpart.

b. Revision of §§ 431.50(c) and 431.51 for consistency in dealing with "exceptions".

c. Removal of outdated content:

- References to title IV-E children are removed from § 431.52 (Payment for out-of-State services) because, under section 1902(a) of the Act, the State where these children reside is responsible for providing their Medicaid services.

- References to section 1903(m) waivers are removed from § 431.55 because those waivers had to be in place before August 10, 1982 and could not be renewed.

- The presumed exception that would permit a State to limit payment for rural health clinic services to services provided by a rural health clinic (paragraph (c) of § 431.54) is removed because, by definition (§ 440.20(b)), "rural health clinic services" are already limited to services "furnished by a rural health clinic".

d. Editorial revisions that clarify the rules and follow the general style conventions of HCFA rules, such as—

- Reduction of overlong sentences (70 to 100 words) in § 431.55(c) and (e).

- Use of active voice and present tense rather than passive voice and future tense.

- More designated items and more headings to guide the reader.

## V. Medicaid: Post-Eligibility Treatment of Income of Individuals in Institutions

### 1. Background

a. Title XIX of the Act and the Medicaid regulations provide for mandatory and optional disregards of certain amounts of income of individuals who are in institutions. These disregards help to determine how much of a recipient's income is applied to the cost of institutional care.

b. Final regulations published on February 8, 1988 (53 FR 3586), to be

effective April 8, 1988, amended Medicaid rules with the intent of making optional for States what had previously been required: The disregard of income needed to cover expenses incurred for necessary medical and remedial care recognized under State law but not included in the State Medicaid plan.

c. The statutory amendments discussed below made it necessary to restore the requirement that the February 8 rules would have made optional, and to make other changes in the regulations pertaining to treatment of income of individuals in institutions.

### 2. Statutory Provisions

a. Section 303(d) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360, commonly referred to as the MCCA) amended section 1902 of the Act to add a new subsection (r), which was redesignated as (r)(1) by section 303(e)(5) of the same law. Subsection (r)(1) requires disregard of income needed for the type of expenses noted in 1. b. above. Since the change in the law was made effective on April 8, 1988, the result is that the February 8 provision never went into effect and the previous disregard requirement continues without interruption. (Section 303(a)(1)(B) of the MCCA added to the Act a new section 1924 that also affects posteligibility treatment of the income and resources of an institutionalized spouse and of the spouse who remains in the community. The new provisions are being implemented by States under general instructions and will be codified in the CFR through other regulations identified as BPD-609-P.)

b. Section 9115 of OBRA '87 amends section 1611(e)(1) of the Act to provide, in subparagraph (G), that full SSI and SSP benefits be continued for up to three months after the beneficiary enters a medical institution if specified conditions are met. Section 9115 also amends section 1902(o) of the Act (which already required disregard of any SSI and SSP benefits continued under section 1611(e)(1)(E) of the Act) to require that, in determining the amount of any post-eligibility contribution by the individual to the cost of care and services, the full SSI and SSP benefits continued under section 1611(e)(1)(G) of the Act also be disregarded.

c. Section 9119 amends title XVI (SSI) of the Act to increase the monthly SSI payment to recipients in medical institutions from \$25 to \$30 for individuals, and from \$50 to \$60 for couples.

As enacted, section 9119 did not amend the Medicaid law. However, section 411(n)(3) of Pub. L. 100-360 adds

to section 1902 a new subsection (q) which—

- Requires Medicaid personal needs allowances of at least \$30 for an individual and \$60 for a couple; and
- Makes the amendment effective for Medicaid payments made on or after July 1, 1988.

Previous regulations specified minimum personal allowance amounts for the 50 States, the District of Columbia, American Samoa, and the Northern Mariana Islands, but not for Puerto Rico, the Virgin Islands, and Guam. Now that minimum amounts are required by law, they must be applied also to the latter three jurisdictions. Disregard of continued SSI or SSP payments does not apply because the SSI program is not in effect in those three jurisdictions.

### 3. Changes in the Regulations

a. Sections 435.725 and 435.733 of the Medicaid rules are revised to provide that, in determining the amount that a recipient in a medical institution will contribute to the cost of institutional care, the full SSI and SSP benefits continued under sections 1611(e)(1) (E) and (G) of the Act must be disregarded.

b. Sections 435.725, 435.733, 435.832, and 438.832 of the Medicaid rules are revised—

- To require a minimum personal needs allowance of \$30 for individuals and \$60 for couples; and
- To conform to section 1902(r)(1) by revising the paragraphs that deal with expenses incurred for necessary medical and remedial care recognized under State law but not included in the State Medicaid plan, to restore the requirement that was in effect before publication of the February 8 rules.

## VI. Medicaid—Requirements for Organ Transplant Procedures

### A. Statutory Provisions

COBRA section 9507(a) amended section 1903(i) of the Act to add a new paragraph (1) under which FFP would be denied for organ transplant procedures after December 1986 unless—

1. The State plan provides for written standards for coverage of those procedures; and
2. Those standards provide that—
  - Similarly situated individuals are treated alike; and
  - Any restriction on the facilities or practitioners that may provide such procedures is consistent with the accessibility of high quality care to individuals eligible for the procedures under the plan.



OBRA '87 section 4118(d), through a technical amendment made effective as though it had been enacted with COBRA, added, at the end of the paragraph (i):

Nothing in paragraph (1) shall be construed as permitting a State to provide services under its plan under this title that are not reasonable in amount, duration, and scope to achieve their purpose.

#### B. Changes in the Regulations

Section 441.10 has been amended and a new § 441.35 has been added to reflect both of the statutory amendments.

#### VII. Medicare—Payment for Hospital Outpatient Radiology and Other Diagnostic Services

##### 1. Statutory Provisions

Part B of the Medicare program covers medical and other health services as defined in section 1861(s) of the Act. The method for determining payment for covered radiology services and other diagnostic procedures furnished by a hospital on an outpatient basis has changed as a result of section 4066 of OBRA '87. Specifically, section 4066 (which was subsequently amended by section 411(g)(4) of the Medicare Catastrophic Coverage Act of 1988) amends section 1833 of the Act to add a new subparagraph (a)(2)(E) and a new subsection (n) that change the basis for Medicare payment—

- For outpatient hospital radiology services furnished on or after October 1, 1988; and
- For certain other diagnostic procedures (as defined by the Secretary) furnished on or after October 1, 1989.

##### 2. Changes in the Regulations

The new method determines payment to the hospital partly on the basis of the prevailing charges in the locality for the same services furnished by physicians in their offices. The law provides that the prevailing charge portion of the radiology payment is computed on the basis of "62 percent \* \* \* of 80 percent of the prevailing charge \* \* \* for participating physicians for the same services \* \* \*". The 62 percent adjustment is necessary to exclude the professional component of the prevailing charge, and the 80 percent adjustment excludes beneficiary coinsurance amounts. The order of the computation as stated in the law does not properly take into account the Part B annual deductible which must be subtracted from the technical component of the professional charge before the coinsurance adjustment is made. We do not believe that Congress intended to change the way that Part B

deductible and coinsurance are applied in determining Medicare payment. We have made this clear in a new § 413.122 which conforms to current billing practices for outpatient radiology and for other diagnostic procedures. The section 4066 changes also required us to amend § 413.13(c) to specify that these costs are aggregated and treated separately from all other hospital costs.

#### VIII. Medicare—Physician Certification of Need for Services

As noted above, final rules published on March 2, 1988 redesignated subpart P of part 405 of the Medicare rules under a new part 424—Conditions for Medicare Payment. We requested comments from any reader who believed that, in the process of simplifying, clarifying, and redesignating the old rules we had unintentionally made substantive changes not discussed in the preamble.

We received two comments (from a national professional association and a law firm) indicating that the following change was substantive.

Previous § 405.1625 stated:

(a) The health insurance program recognizes the physician as the key figure in determining utilization of health services; the physician decides upon admission to a hospital, orders tests, drugs, and treatments, and determines the length of stay.

New § 424.10 reads:

(a) *Purpose.* The physician has a major role in determining utilization of health services furnished by providers. The physician decides upon admissions, orders tests, drugs and treatments, and determines the length of stay.

In the revised section, using "major role" rather than "key figure" was not intended as a substantive change. The second clause, which provides the "evidence" of the physician's importance, the things he or she does that influence utilization, was retained unchanged. However, in order to ensure that others do not misinterpret the change as reducing the physician's importance in determining utilization of services, we are restoring the term "key figure" in § 424.10. This change appears among the technical amendments at the end of the rules text.

#### IX. Medicare and Medicaid: Handling of a New Term

"Conditions of participation" is the term that has long been used in connection with providers that participate or seek to participate in Medicare. In some cases, the same conditions apply to participation in Medicaid.

Final rules published on February 2, 1989 (54 FR 5316) amended part 483

(established by a final rule published on June 3, 1988 at 53 FR 20448) to add a new subpart B. Subpart B redesignated and revised the Medicare rules previously contained in subpart K of part 405 (Conditions of Participation; Skilled Nursing Facilities (SNFs)) and the Medicaid rules in subparts D through F of part 442 (Requirements for SNFs and Intermediate Care Facilities (ICFs)), and standards for ICFs other than ICFs for the Mentally Retarded (ICFs/MR).

The rules published on February 2, 1989 used the term "requirements for participation" in lieu of "conditions of participation".

This new terminology would require us to identify all the Medicare and Medicaid rules that refer to "conditions of participation" in order to insert "requirement for participation" where appropriate.

We have chosen, as a simpler way to take care of current and future needs in this area, to define "conditions of participation" to include "requirements for participation", as the latter term is used in part 483. The definition is inserted in § 400.200, and appears at the end of the text with other technical and conforming amendments.

#### X. Technical Amendments

The technical amendments that appear under part 430 and at the end of the text are necessary to—

- Make explicit what was implicit in the language of 45 CFR 201.3(g) before it was redesignated as 42 CFR 430.20 by final rules published on September 21, 1988 at 53 FR 36573. The § 201.3(g) reference to "additional assistance" (to be provided under an amendment to the State Medicaid plan) means not only additional services, but also increased payment for services already included in the plan.

- Explain acronyms and abbreviations that are used frequently in the HCFA rules.

- Correct references to sections of the law and regulations that have been redesignated or removed, and to organizations that have changed their names.

- Make clear the relationship between "conditions of participation" and "requirements for participation", and between "condition level" deficiencies, and deficiencies with respect to "level A requirements".

- Make clear, by amending parts 410 and 424, that physician certification of need for medical and other health services is required only if those part B services are furnished by providers and, accordingly, is not required for home dialysis support services furnished by



an ESRD facility. (The plan of treatment requirements for home dialysis support services are set forth in § 410.52(b) of the Medicare rules.)

- Conform the definition of "institution for mental diseases" (as it appears in §§ 435.1009 and 440.140(a)(2)) to the clarification made by section 411(k)(14) of Pub. L. 100-360.

- Conform an appeals provision (§ 498.3(d)(3)) to the pertinent provider agreement rule (§ 489.12).

#### **XI. Waiver of Proposed Rulemaking**

These rules conform HCFA regulations to 14 self-executing amendments to the Medicare and Medicaid laws (titles XVIII and XIX of the Social Security Act) and one amendment to the SSI law (title XVI of the Act).

With two minor exceptions, the amendments to the Act are so specific and detailed that they leave no room for alternative interpretations or implementation. The two exceptions are in the amendments made by sections 4066 and 4070(b).

#### **Section 4066 Amendments**

Amended sections 1833(a)(2)(E) and 1833(n) of the Act are specific as to the changes in the method for computing payment for hospital outpatient radiology services. However, the Secretary is to define the "other outpatient diagnostic procedures" that are subject to those changed computation methods. We plan to publish the definition in the Federal Register.

Added section 1861(ff) of the Act requires us to establish guidelines as to the frequency and duration of partial hospitalization services. In these rules we are adopting guidelines under which we delegate responsibility to the physician who establishes and reviews the plan of treatment. We believe that the physician is best able to determine the frequency and duration that is necessary and appropriate for each patient. If experience indicates the need for Federal limits, we will publish additional guidelines as a notice of proposed rulemaking.

The editorial changes and technical amendments to other related regulations have no substantive effect, and the new § 430.25 simply codifies long-standing practice. Accordingly, we find that there is good cause to dispense with proposed rulemaking.

However, as previously indicated, we will consider timely comments from anyone who believes that, in the conforming amendments we have misinterpreted the intent of the law, or in the technical and editorial changes,

we have unintentionally made substantive changes other than those discussed in this preamble.

Although we cannot respond to comments individually, if we change these rules as a result of comments, we will discuss all comments in the preamble to the revised rules.

#### **XII. Regulatory Impact Statement**

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulation that is likely to have an annual impact of \$100 million or more, cause a major increase in costs or prices, or meet other thresholds specified in section 1(b) of the order.

In addition, consistent with the Regulatory Flexibility Act (RFA) and section 1102(b) of the Social Security Act, we prepare a regulatory flexibility analysis for each rule, unless the Secretary certifies that the particular rule will not have a significant economic impact on a substantial number of small entities, or a significant impact on the operation of a substantial number of small rural hospitals.

The RFA defines "small entity" as a small business, a nonprofit enterprise, or a governmental jurisdiction (such as a county, city, or township) with a population of less than 50,000. We also consider all providers and suppliers of services to be small entities. For purposes of section 1102(b) of the Act, we define small rural hospital as a hospital that has fewer than 50 beds, and is located anywhere but in a metropolitan statistical area.

These regulations amend the HCFA rules to reflect changes made by specified provisions of the four laws identified at the beginning of this preamble. Since the provisions are already in effect, publication of these conforming amendments to the HCFA rules will have no additional impact, but will simply ensure that the rules reflect current statutory requirements.

#### **Accordingly—**

- We have determined that these rules will not have a significant impact on the general economy nor do they meet any of the other threshold criteria contained in Executive Order 12291. Therefore, a regulatory impact analysis is not required.

- We have determined, and the Secretary certifies, that these rules will not have a significant economic impact on a substantial number of small entities, and will not significantly affect the operation of a substantial number of small rural hospitals. Therefore, a regulatory flexibility analysis is not required.

#### **Paperwork Reduction Act**

These regulations contain no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

#### **List of Subjects**

##### **42 CFR Part 400**

Grant programs—health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

##### **42 CFR Part 405**

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

##### **42 CFR Part 406**

Health facilities, Kidney diseases, Medicare.

##### **42 CFR Part 408**

Health facilities, Kidney diseases, Medicare.

##### **42 CFR Part 409**

Health facilities, Medicare.

##### **42 CFR Part 410**

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

##### **42 CFR Part 413**

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

##### **42 CFR Part 416**

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

##### **42 CFR Part 417**

Administrative practice and procedures, Health maintenance organization (HMO), Medicare, Reporting and recordkeeping requirements.

##### **42 CFR Part 424**

Assignment of benefits, Physician certification, Claims for payment, Emergency services, Plan of treatment.

##### **42 CFR Part 430**

Grant programs—health, Medicaid.

##### **42 CFR Part 431**

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.



**42 CFR Part 435**

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

**42 CFR Part 436**

Aid to Families with Dependent Children, Grant programs—health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

**42 CFR Part 440**

Grant programs—health, Medicaid.

**42 CFR Part 441**

Family planning, Grant programs—health, Infants and children, Medicaid, Penalties, Prescription drugs, Reporting and recordkeeping requirements.

**42 CFR Part 447**

Accounting, Administrative practice and procedure, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

**42 CFR Part 455**

Fraud, Grant programs—health, Health facilities, Health professions, Investigations, Medicaid, Reporting and recordkeeping requirements.

**42 CFR Part 462**

Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

**42 CFR Part 465**

Health facilities, Medicare, Reporting and recordkeeping requirements.

**42 CFR Part 489**

Health facilities, Medicare.

**42 CFR Part 491**

Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements, Rural areas.

**42 CFR Part 498**

Administrative practice and procedure, Appeals, Medicare practitioners, providers and suppliers.

42 CFR chapter IV is amended as set forth below:

A. Part 406.

**PART 406—HOSPITAL INSURANCE ELIGIBILITY AND ENTITLEMENT**

1. The authority citation continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

**Subpart B—Hospital Insurance Without Monthly Premiums**

2. The heading of subpart B is revised to read as set forth below.

3. Section 406.22 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 406.22 Monthly premiums.**

(a) *Promulgation and effective date.* Beginning with 1984, premiums are promulgated each September, effective for the succeeding calendar year.

(b) *Premium amounts.* (1) Before July 1974, the monthly premium was \$33.

(2) For months after June 1974 and before January 1989, the dollar amount was determined by multiplying \$33 by the ratio of next year's inpatient deductible to \$76, which was the inpatient deductible determined for 1973. (Because of price controls, the deductible actually charged for 1973 was \$72.)

(3) Beginning with 1989, the monthly premium is equal to one twelfth of the per capita amount that the Secretary estimates will be payable under part A for services and administrative costs with respect to individuals age 65 and over who are entitled to part A benefits throughout the year for which the premium applies.

(4) The amount determined by the formula is rounded to the nearest multiple of \$1 (50¢ is rounded to the next higher dollar).

• • • • •

B. Part 408.

**PART 408—PREMIUMS FOR SUPPLEMENTARY MEDICAL INSURANCE**

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1818, 1837–1840, 1843, 1871, and 1881(d) of the Social Security Act (42 U.S.C. 1302, 1395i–2, 1395p–1395s, 1395v, 1395hh, and 1395rr(d)), and the Federal Claims Collection Act (31 U.S.C. 3711).

2. Section 408.20 is revised to read as follows:

**§ 408.20 Monthly premiums.**

(a) *Statutory provisions.* (1) The law established a monthly premium of \$3 for the initial period of the program. It also set forth criteria and procedures for the Secretary to follow each December, beginning with December 1968, to determine and promulgate the standard monthly premium for the 12-month period beginning with July of the following year.

(2) The law was amended in 1983 to require that the Secretary promulgate the standard monthly premium in

September of that year, and each year thereafter, to be effective for the 12 months beginning with the following January.

(3) The standard monthly premium applies to individuals who enroll during their initial enrollment periods. In other situations, that premium may be increased or decreased as specified in this subpart.

(4) The law was further amended in 1984 to include a temporary "hold harmless" provision (set forth in paragraph (e) of this section), that was subsequently extended and finally made permanent in 1988.

(b) *Criteria and procedures for the period from July 1976 through December 1983, and for periods after December 1990.* (1) For periods from July 1976 through December 1983, the Secretary determined and promulgated as the standard monthly premium (for disabled as well as aged enrollees) the lower of the following:

(i) The actuarial rate for the aged.

(ii) The monthly premium promulgated the previous December for the year beginning July 1, increased by a percentage that is the same as the latest cost-of-living increase in old age insurance benefits that occurred before the current promulgation. (Because of the change in the effective dates of the premium amount (under paragraph (a)(2) of this section), there was no increase in the standard monthly premium for the period July 1983 through December 1983.)

(2) For periods after December 1990, the Secretary determines the standard monthly premium in the manner specified in paragraph (b)(1) of this section, but promulgates it in September, for the following calendar year.

(c) *Premiums for calendar years 1984 through 1990.* For calendar years 1984 through 1990, the standard monthly premium for all enrollees—

(1) Is equal to 50 percent of the actuarial rate for enrollees age 65 or over, that is, is calculated on the basis of 25 percent of program costs without regard to any cost-of-living increase in old age insurance benefits; and

(2) Is promulgated in the preceding September.

(d) *Limitation on increase of standard premium: 1987 and 1988.* If there is no cost-of-living increase in old age or disability benefits for December 1985 or December 1986, the standard monthly premiums for 1987 and 1988 (promulgated in September 1986 and September 1987, respectively) may not be increased.

(e) *Nonstandard premiums for certain cases—(1) Basic rule.* A nonstandard



premium may be established in individual cases only if the individual is entitled to old age or disability benefits for the months of November and December, and actually receives the corresponding benefit checks in December and January.

(2) *Special rules: Calendar years 1987 and 1988.* For calendar years 1987 and 1988, the following rules apply:

(i) A nonstandard premium may be established if there is a cost-of-living increase in old age or disability benefits but, because the increase in the standard premium is greater than the cost-of-living increase, the beneficiary would receive a lower cash benefit in January than he or she received in December.

(ii) A nonstandard premium may not be established if the reduction in the individual's benefit would result, in whole or in part, from any circumstance other than the circumstance described in paragraph (e)(2)(i) of this section.

(3) *Special rule: Calendar years after 1988.* (i) Beginning with calendar year 1989, a premium increase greater than the cost-of-living increase is still a prerequisite for a nonstandard premium.

(ii) However, a nonstandard premium is not precluded solely because the cash benefit is further reduced as a result of government pension offset or workers' compensation payment.

(4) *Amount of nonstandard premium.* The nonstandard premium is the greater of the following:

(i) The premium paid for December.

(ii) The standard premium promulgated for January, reduced as necessary to compensate for—

(A) The fact that the cost-of-living increase was less than the increase in the standard premium; or

(B) The further reduction in benefit because of government pension offset or workers' compensation payments.

(5) *Effective dates of nonstandard premium.* A nonstandard premium established under this paragraph (e) continues in effect for the rest of the calendar year even if later there are retroactive adjustments in benefit payments. (The nonstandard premium could be affected by a determination that the individual had not established, or had lost, entitlement to monthly benefits for November or December, or both.)

(6) *Effect of late enrollment or reenrollment.* A nonstandard premium is subject to increase for late enrollment or reenrollment as required under other sections of this subpart. The increase is computed on the basis of the standard premium and added to the nonstandard premium.

C. Part 409.

## PART 409—HOSPITAL INSURANCE BENEFITS

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1812, 1813, 1861, 1862(h), 1871 and 1881 of the Social Security Act (42 U.S.C. 1302, 1395d, 1395e, 1395x, 1395y(h), 1395hh, and 1395rr).

2. Section 409.19 is revised to read as follows:

### § 409.19 Services related to cardiac pacemakers and pacemaker leads.

(a) *Requirement.* (1) Providers that request or receive Medicare payment for the implantation, removal, or replacement of permanent cardiac pacemakers and pacemaker leads must submit to HCFA the information required for the pacemaker registry.

(2) The required information is set forth under 21 CFR part 805 of the FDA regulations and must be submitted in accordance with general instructions issued by HCFA.

(b) *Denial of payment.* If HCFA finds that a provider has failed to comply with paragraph (a) of this section, HCFA will deny payment for the implantation, removal, or replacement of any permanent cardiac pacemaker or pacemaker lead, effective 45 days after sending the provider written notice in accordance with paragraph (c) of this section.

(c) *Notice of denial of payment.* The notice of denial of payment—

(1) States the reasons for the determination;

(2) Grants the provider 45 days from the date of the notice to submit the information or evidence showing that the determination is in error; and

(3) Informs the provider of its right to hearing.

(d) *Right to hearing.* If the denial of payment determination goes into effect at the expiration of the 45-day period, it constitutes an "initial determination" subject to administrative and judicial review under part 498 of this chapter.

3. In § 409.42, paragraph (d) is revised to read as follows:

### § 409.42 Requirements and conditions for home health services.

• • • • •

(d) *Plan of treatment requirements.* The home health services must be

\* Before January 1981, only a doctor of medicine or osteopathy could establish a plan for home health services. A plan of treatment established before July 1981 was acceptable for Medicare Part A payment only if it was established within 14 days after the individual's discharge from a hospital or SNF.

furnished under a plan of treatment that is established and periodically reviewed by a doctor of medicine, osteopathy, or podiatric medicine. A doctor of podiatric medicine may establish a plan of treatment only if that is consistent with the functions he or she is authorized to perform under State law.

4. Section 409.87 is amended to revise paragraphs (a)(3) and (a)(6) to read as follows:

### § 409.87 Blood deductible.

(a) General provisions. \* \* \*

3. Medicare does not pay for the first 3 units of whole blood or units of packed red cells that a beneficiary receives, during a benefit period, as an inpatient of a hospital or SNF, or on an outpatient basis under Medicare Part B.

\* \* \* \* \*

(6) The Part A blood deductible is reduced to the extent that the Part B blood deductible has been applied. For example, if a beneficiary had received one unit under Medicare Part B, and later in the same benefit period received three units under Medicare Part A, Medicare Part A would pay for the third of the latter units. (As specified in § 410.161 of this chapter, the Part B blood deductible is reduced to the extent a blood deductible has been applied under Medicare Part A.)

\* \* \* \* \*

D. Part 410.

## PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1832, 1835, 1861(r), (s), and (cc), 1871, and 1881 of the Social Security Act (42 U.S.C.) 1302, 1395K, 1395I, 1395n, 1395x(r), (s), and (cc), 1395hh, and 1395rr.

### § 410.2 [Amended]

2. Section 410.2 is amended to add the following definition in alphabetical order:

*Partial hospitalization services* means (a) A distinct and organized intensive ambulatory treatment program that offers less than 24-hour daily care and furnishes services that—

(1) Are reasonable and necessary for the diagnosis or active treatment of the individual's condition;

(2) Are reasonably expected to improve or maintain the individual's condition and functional level and to prevent relapse or hospitalization; and

(3) Include any of the following:

(i) Individual and group therapy with physicians or psychologists or other



mental health professionals to the extent authorized under State law.

(ii) Occupational therapy requiring the skills of a qualified occupational therapist.

(iii) Services of social workers, trained psychiatric nurses, and other staff trained to work with psychiatric patients.

(iv) Drugs and biologicals furnished for therapeutic purposes, subject to the limitations specified in § 410.29.

(v) Individualized activity therapies that are not primarily recreational or diversionary.

(vi) Family counseling, the primary purpose of which is treatment of the individual's condition.

(vii) Patient training and education, to the extent the training and educational activities are closely and clearly related to the individual's care and treatment.

(viii) Diagnostic services.

(ix) Other items and services as specified by HCFA, excluding meals and transportation.

3. Section 410.10 is amended to correct the heading, and revise the introductory text, and paragraph (c) to read as follows:

**§ 410.10 Medical and other health services: Included services.**

Subject to the conditions and limitations specified in this subpart, "medical and other health services" includes the following services:

(c) Services and supplies, including partial hospitalization services, that are incident to physician services and are furnished to outpatients by or under arrangements made by a hospital.

4. Section 410.27 is revised to read as follows:

**§ 410.27 Outpatient hospital services and supplies incident to physicians' services: Conditions.**

(a) Medicare Part B pays for hospital services and supplies furnished incident to physicians' services to outpatients, including drugs and biologicals that cannot be self-administered, if—

(1) They are furnished—

(i) By or under arrangements made by a participating hospital; and

(ii) As an integral though incidental part of a physician's services; and

(2) In the case of partial hospitalization services, also meet the conditions of paragraph (d) of this section.

(b) Drugs and biologicals are also subject to the limitations specified in § 410.168.

(c) Rules on emergency services furnished to outpatients by

nonparticipating hospitals are specified in § 410.168.

(d) Medicare Part B pays for partial hospitalization services if they are—

(1) Prescribed by a physician who certifies and recertifies the need for the services in accordance with subpart B of part 424 of this chapter; and

(2) Furnished under a plan of treatment as required under subpart B of part 424 of this chapter.

5. Section 410.64 is revised to read as follows:

**§ 410.64 Services related to cardiac pacemakers and pacemaker leads.**

(a) *Requirement.* (1) Physicians or providers that request or receive payment for the implantation, removal, or replacement of permanent cardiac pacemakers and pacemaker leads, must submit to HCFA the information required for the pacemaker registry.

(2) The required information is set forth under 21 CFR part 805 of the FDA regulations and must be submitted in accordance with general instructions issued by HCFA.

(b) *Denial of payment.* If HCFA finds that a physician or provider has failed to comply with paragraph (a) of this section, HCFA will deny payment for the implantation, removal, or replacement of any permanent cardiac pacemaker or pacemaker lead, effective 45 days after sending the physician or provider written notice in accordance with paragraph (c) of this section.

(c) *Notice of denial of payment.* The notice of denial of payment—

(1) States the reasons for the determination;

(2) Grants the physician or provider 45 days from the date of the notice to submit the information or evidence showing that the determination is in error; and

(3) Informs the physician or provider of its right to hearing.

(d) *Right to hearing.* If the denial of payment goes into effect at the expiration of the 45-day period, it constitutes an "initial determination" subject to administrative and judicial review under part 498 of this chapter.

6. In § 410.105, the introductory text and paragraph (b) are revised to read as follows:

**§ 410.105 Requirements for coverage of CORF services.**

Services specified in § 410.100 and not excluded under § 410.102 are covered as CORF services if they are furnished by a participating CORF (that is, a CORF that meets the conditions of subpart B of part 485 of this chapter, and has in effect a provider agreement under part 489 of

this chapter) and if the following requirements are met:

(b) *When and where services are furnished.* (1) All services must be furnished while the individual is under the care of a physician.

(2) Except as provided in paragraph (b)(3) of this section, the services must be furnished on the premises of the CORF.

(3) *Exceptions.* (i) Physical therapy, occupational therapy, and speech pathology services may be furnished away from the premises of the CORF.

(ii) The single home visit specified in § 410.100(m) is also covered.

7. In § 410.152, paragraph (a)(1) is republished, and paragraphs (a)(1)(iv), (a)(2)(iii), and (i) are revised to read as follows:

**§ 410.152 Amounts of payment.**

(a) *General provisions.*—(1) *Exclusion from incurred expenses.* As used in this section, "incurred expenses" are expenses incurred by an individual, during his or her coverage period, for covered Part B services, excluding the following:

(iv) In the case of physician and CORF services for the treatment of a mental, psychoneurotic, or personality disorder, furnished to an individual who is not an inpatient of a hospital, the expenses excluded from incurred expenses under § 410.155(c).

(2) *Other applicable provisions.* \* \* \*

(iii) The special rules for payment to health maintenance organizations (HMOs), health care prepayment plans (HCPPs), and competitive medical plans (CMPs) that are set forth in part 417 of this chapter. (A prepayment organization that does not qualify as an HMO, CMP, or HCPP is paid in accordance with paragraph (b)(4) of this section.)

(i) *Amount of payment: ASC facility services.* For ASC facility services that are furnished in connection with the surgical procedures specified in part 416 of this chapter, Medicare Part B pays 80 percent of a standard overhead amount, as specified in § 416.120(c) of this chapter.<sup>1</sup>

<sup>1</sup> For services furnished before July 1, 1987, Medicare Part B paid 100 percent of the standard amount.



8. In § 410.155, paragraph (b) is republished, and paragraph (c) is revised to read as follows:

**§ 410.155 Psychiatric services limitations: Expenses incurred for physician services and CORF services.**

\* \* \*

(b) *Services subject to limitation.* The psychiatric services limitation applies to physician services and CORF services (furnished by physicians or nonphysicians) for the treatment of a mental, psychoneurotic, or personality disorder, when the services are furnished to an individual who is not an inpatient in a hospital.

(c) *Limitation on incurred expenses—*

(1) *Current limit.* For purposes of §§ 410.152 and 410.160, incurred expenses for the services specified in paragraph (b) of this section exclude expenses that are in excess of 62½ percent of the sum of the reasonable charges for physician services and the customary charges for CORF services.

(2) *Previous limits.* For years before calendar year 1990, incurred expenses that could be considered were limited to the lower of the current 62½ percent and a fixed dollar amount that—

(i) For calendar years before 1988, was \$312.50;

(ii) For calendar year 1988, was \$562.50; and

(iii) For calendar year 1989, was \$1,375.

\* \* \*

9. In § 410.160, paragraph (a) is republished, and paragraph (b) is revised to read as follows:

**§ 410.160 Part B annual deductible.**

(a) *Basic rule.* Except as provided in paragraph (b) of this section, incurred expenses (as defined in § 410.152) are subject to, and count toward meeting the annual deductible.

(b) *Exceptions.\** The following incurred expenses are not subject to the Part B annual deductible and do not count toward meeting that deductible:

(1) Home health services.

(2) Pneumococcal vaccines and their administration.

\* \* \*

E. Part 413 is amended as set forth below:

**PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT: PAYMENT FOR END-STAGE RENAL DISEASE SERVICES**

1. The authority citation is revised to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833 (a), and (n), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a-1, 1395f(b), 1395g, 1395l (a) and (n), 1395x(v), 1395hh, 1395rr, and 1395www).

2. Section 413.13 is amended to add new paragraphs (c)(3) and (c)(4), to read as follows:

**§ 413.13 Amount of payments if customary charges for services furnished are less than reasonable costs.**

\* \* \*

(c) \* \* \*

(3) *Hospital outpatient radiology services.* The reasonable costs and customary charges for hospital outpatient radiology services furnished on or after October 1, 1988, that are subject to the payment method described in § 413.122, are aggregated and treated separately from all other hospital costs and charges incurred during the cost reporting period.

(4) *Other diagnostic procedures performed by a hospital on an outpatient basis.* The reasonable costs and customary charges for other diagnostic procedures identified by HCFA, that are performed on an outpatient basis by a hospital on or after October 1, 1989, and that are subject to the payment method described in § 413.122, are aggregated and treated separately from all other hospital costs or charges incurred during the cost reporting period.

3. A new § 413.122 is added, to read as follows:

**§ 413.122 Payment for hospital outpatient radiology services and other diagnostic procedures.**

(a) *Basis and purpose.* (1) This section implements section 1833(n) of the Act and establishes the method for determining Medicare payments for radiology services and other diagnostic procedures performed by a hospital on an outpatient basis.

(2) For purposes of this section—

(i) Radiology services include diagnostic and therapeutic radiology, nuclear medicine, CAT scan procedures, magnetic resonance imaging, ultrasound and other imaging services; and

(ii) Other diagnostic procedures are those identified by HCFA, and do not include diagnostic radiology procedures or diagnostic laboratory tests.

(b) *Payment for hospital outpatient radiology services.* (1) The aggregate payment for hospital outpatient radiology services furnished on or after October 1, 1988 is equal to the lesser of the following:

(i) The hospital's reasonable cost or customary charges, as determined in accordance with § 413.13, reduced by the applicable Part B annual deductible and coinsurance amounts.

(ii) The blended payment amount described in paragraph (b)(2) of this section.

(2) The blended payment amount for hospital outpatient radiology services furnished on or after October 1, 1988, but before October 1, 1989, is equal to the sum of—

(i) 65 percent of the hospital-specific amount (the hospital's reasonable cost or customary charges, whichever is less, reduced by the applicable Part B annual deductible and coinsurance amounts); and

(ii) 35 percent of a prevailing charge or fee schedule amount that is calculated as 80 percent of the amount determined by subtracting the applicable Part B annual deductible from 62 percent of the prevailing charges (or for services furnished on or after January 1, 1989, the fee schedule amount established) for the same services when furnished by participating physicians in their offices in the same locality.

(3) For hospital outpatient radiology services furnished on or after October 1, 1989, the blended payment amount is equal to the sum of 50 percent of the hospital-specific amount and 50 percent of the fee schedule amount.

(c) *Payment for other diagnostic procedures.* (1) The aggregate payment for other diagnostic procedures performed by a hospital on an outpatient basis on or after October 1, 1989 is equal to the lesser of the following:

(i) The hospital's reasonable cost or customary charges, as determined in accordance with § 414.13, reduced by the applicable Part B annual deductible and coinsurance amounts.

(ii) The blended payment described in paragraph (c)(2) of this section.

(2) The blended payment amount for other diagnostic procedures furnished on or after October 1, 1989, but before October 1, 1990, is equal to the sum of—

(i) 65 percent of the hospital-specific amount (the hospital's reasonable cost or customary charges, whichever is less, reduced by the applicable Part B annual deductible and coinsurance amounts); and

(ii) 35 percent of a prevailing charge amount that is calculated as 80 percent

\* The deductible provisions did not apply to ASC facility services that were furnished before July 1987, nor to physician services that were furnished before April 1988 and that met the requirements for payment of 100 percent of the reasonable charges.



of the amount determined by subtracting the applicable Part B annual deductible from 42 percent of the prevailing charges for the same services furnished by participating physicians in their offices in the same locality.

(3) For other diagnostic procedures performed by a hospital on or after October 1, 1990, the blended payment is equal to 50 percent of the hospital-specific amount and 50 percent of the prevailing charge amount.

F. Part 416 is amended as set forth below:

1. The table of contents is revised to read as follows:

## **PART 416—AMBULATORY SURGICAL SERVICES**

### **Subpart A—General Provisions and Definitions**

Sec.

- 416.1 Basis and scope.
- 416.2 Definitions.

### **Subpart B—General Conditions and Requirements**

- 416.25 Basic requirements.
- 416.26 Qualifying for an agreement.
- 416.30 Terms of agreement with HCFA.
- 416.35 Termination of agreement.

### **Subpart C—Specific Conditions for Coverage**

- 416.40 Condition for coverage—Compliance with State licensure law.
- 416.41 Condition for coverage—Governing body and management.
- 416.42 Condition for coverage—Surgical services.
- 416.43 Condition for coverage—Evaluation of quality.
- 416.44 Condition for coverage—Environment.
- 416.45 Condition for coverage—Medical staff.
- 416.46 Condition for coverage—Nursing services.
- 416.47 Condition for coverage—Medical records.
- 416.48 Condition for coverage—Pharmaceutical services.
- 416.49 Condition for coverage—Laboratory and radiologic services.

### **Subpart D—Scope of Benefits**

- 416.60 General rules.
- 416.61 Scope of facility services.
- 416.65 Covered surgical procedures.
- 416.75 Performance of listed surgical procedures on an inpatient hospital basis.

### **Subpart E—Payment for Facility Services**

- 416.120 Basis for payment.
- 416.125 ASC services payment rate.
- 416.130 Publication of revised payment methodologies.
- 416.140 Reporting requirements.
- 416.150 Beneficiary appeals.

Authority: Secs. 1102, 1832(a)(2), 1833, 1863 and 1864 of the Social Security Act (42 U.S.C. 1302, 1395k(a)(2), 1395i, 1395z and 1395aa).

2. In subpart A, §§ 416.1 and 416.2 are revised, and § 416.3 is removed, to read as follows:

#### **§ 416.1 Basis and scope.**

(a) *Statutory basis.* (1) Section 1832(a)(2)(F)(i) of the Act provides for Medicare Part B coverage of facility services furnished in connection with surgical procedures specified by the Secretary under section 1833(i)(1) of the Act.

(2) Section 1833(i)(1)(A) of the Act requires the Secretary to specify the surgical procedures that can be performed safely on an ambulatory basis in an ambulatory surgical center, or a hospital outpatient department.

(3) Section 1833(i)(2)(A) and (3) specify the amounts to be paid for facility services furnished in connection with the specified surgical procedures when they are performed, respectively, in an ASC, or in a hospital outpatient department.

(b) *Scope.* This part sets forth—

(1) The conditions that an ASC must meet in order to participate in the Medicare program;

(2) The scope of covered services; and

(3) The conditions for Medicare payment for facility services.

#### **§ 416.2 Definitions.**

As used in this part:

*Ambulatory surgical center or ASC* means any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization, has an agreement with HCFA under Medicare to participate as an ASC, and meets the conditions set forth in subparts B and C of this part.

*ASC services* means facility services that are furnished in an ASC.

*Covered surgical procedures* means those surgical and other medical procedures that meet the criteria specified in § 416.65 and are published by HCFA in the Federal Register.

*Facility services* means services that are furnished in connection with covered surgical procedures performed in an ASC, or in a hospital on an outpatient basis.

3. In subpart B, the subpart heading and § 416.25 are revised, a new § 416.26 is added, § 416.30 is amended by revising the introductory text and paragraphs (a), (b), (e), and (f) to read as follows, and the undesignated center heading entitled "Conditions of Coverage" and §§ 416.20 and 416.39 are removed.

### **Subpart B—General Conditions and Requirements**

#### **§ 416.25 Basic requirements.**

Participation as an ASC is limited to facilities that—

- (a) Meet the definition in § 416.2; and
- (b) Have in effect an agreement obtained in accordance with this subpart.

#### **§ 416.26 Qualifying for an agreement.**

(a) *Deemed compliance.* HCFA may deem an ASC to be in compliance with any or all of the conditions set forth in subpart C of this part if—

(1) The ASC is accredited by a national accrediting body, or licensed by a State agency, that HCFA determines provides reasonable assurance that the conditions are met;

(2) In the case of deemed status through accreditation by a national accrediting body, where State law requires licensure, the ASC complies with State licensure requirements; and

(3) The ASC authorizes the release to HCFA, of the findings of the accreditation survey.

(b) *Survey of ASCs.* (1) Unless HCFA deems the ASC to be in compliance with the conditions set forth in subpart C of this part, the State survey agency must survey the facility to ascertain compliance with those conditions, and report its findings to HCFA.

(2) HCFA surveys deemed ASCs on a sample basis as part of HCFA's validation process.

(c) *Acceptance of the ASC as qualified to furnish ambulatory surgical services.* If HCFA determines, after reviewing the survey agency recommendation and other evidence relating to the qualification of the ASC, that the facility meets the requirements of this part, it sends to the ASC—

- (1) Written notice of the determination; and
  - (2) Two copies of the ASC agreement.
- (d) *Filing of agreement by the ASC.* If the ASC wishes to participate in the program, it must—

- (1) Have both copies of the ASC agreement signed by its authorized representative; and
- (2) File them with HCFA.

(e) *Acceptance by HCFA.* If HCFA accepts the agreement filed by the ASC, returns to the ASC one copy of the agreement, with a notice of acceptance specifying the effective date.

(f) *Appeal rights.* If HCFA refuses to enter into an agreement or if HCFA terminates an agreement, the ASC is entitled to a hearing in accordance with Part 498 of this chapter.



**§ 416.30 Terms of agreement with HCFA.**

As part of the agreement under § 416.26 the ASC must agree to the following:

(a) *Compliance with coverage conditions.* The ASC agrees to meet the conditions for coverage specified in subpart C of this part and to report promptly to HCFA any failure to do so.

(b) *Limitation on charges to beneficiaries.*<sup>1</sup> The ASC agrees to charge the beneficiary or any other person only the applicable deductible and coinsurance amounts for facility services for which the beneficiary—

(1) Is entitled to have payment made on his or her behalf under this part; or

(2) Would have been so entitled if the ASC had filed a request for payment in accordance with § 410.165 of this chapter.

\* \* \*

(e) *Acceptance of assignment.* The ASC agrees to accept assignment for all facility services furnished in connection with covered surgical procedures. For purposes of this section, assignment means an assignment under § 424.55 of this chapter of the right to receive payment under Medicare Part B and payment under § 424.64 of this chapter (when an individual dies before assigning the claim).

(f) *ASCs operated by a hospital.* In an ASC operated by a hospital—

(1) The agreement is made effective on the first day of the next Medicare cost reporting period of the hospital that operates the ASC; and

(2) The ASC participates and is paid only as an ASC, without the option of converting to or being paid as a hospital outpatient department, unless HCFA determines there is good cause to do otherwise.

(3) Costs for the ASC are treated as a non-reimbursable cost center on the hospital's cost report.

\* \* \*

**§ 416.35 [Amended]**

3a. In § 416.35, the following changes are made:

a. In paragraph (b)(2), "will send" is changed to "sends".

b. In paragraph (c) "will not be" is changed to "is not".

**§ 416.39 [Removed]**

4. Section 416.39 is removed.

<sup>1</sup> For facility services furnished before July 1987, the ASC had to agree to make no charge to the beneficiary, since those services were not subject to the part B deductible and coinsurance provisions.

**Subpart C—[Redesignated as Subpart E]**

4a. Subpart C is redesignated as subpart E.

**Subpart C—[Added]**

5. Sections 416.40 through 416.49 are designated under a new "Subpart C—Specific Conditions for Coverage".

6. The undesignated center heading entitled "Scope of Benefits" is designated to read: "Subpart D—Scope of Benefits."

**Subpart D—Scope of Benefits**

7. In newly designated subpart D, §§ 416.60 and 416.61 are revised to read as follows:

**§ 416.60 General rules.**

(a) The services payable under this part are facility services furnished to Medicare beneficiaries, by a participating facility, in connection with covered surgical procedures specified in § 416.65.

(b) The surgical procedures, including all preoperative and post-operative services that are performed by a physician, are covered as physician services under part 410 of this chapter.

**§ 416.61 Scope of facility services.**

(a) *Included services.* Facility services include, but are not limited to—

(1) Nursing, technician, and related services;

(2) Use of the facilities where the surgical procedures are performed;

(3) Drugs, biologicals, surgical dressings, supplies, splints, casts, and appliances and equipment directly related to the provision of surgical procedures;

(4) Diagnostic or therapeutic services or items directly related to the provision of a surgical procedure;

(5) Administrative, recordkeeping and housekeeping items and services; and

(6) Materials for anesthesia.

(7) Intra-ocular lenses (IOLs).

(b) *Excluded services.*

Facility services do not include items and services for which payment may be made under other provisions of Part 405 of this chapter, such as physicians' services, laboratory, X-ray or diagnostic procedures (other than those directly related to performance of the surgical procedure), prosthetic devices (except IOLs), ambulance services, leg, arm, back and neck braces, artificial limbs, and durable medical equipment for use in the patient's home.

8. Redesignated subpart E is amended to revise the subpart heading, remove §§ 416.100 and 416.110, and revise §§ 416.120 and 416.125 to read as follows:

**Subpart E—Payment for Facility Services****§ 416.120 Basis for payment.**

The basis for payment depends on where the services are furnished.

(a) *Hospital outpatient department.* Payment will be in accordance with part 413 of this chapter.

(b) [Reserved]

(c) *ASC—(1) General rule.* Payment is based on a prospectively determined rate. This rate covers the cost of services such as supplies, nursing services, equipment, etc., as specified in § 416.61. The rate does not cover physician services or other medical services covered under part 410 of this chapter (for example, X-ray services or laboratory services) which are not directly related to the performance of the surgical procedures. Those services may be billed separately and paid on a reasonable charge basis.

(2) *Single and multiple surgical procedures.* (i) If one covered surgical procedure is furnished to a beneficiary in an operative session, payment is based on the prospectively determined rate for that procedure.

(ii) If more than one surgical procedure is furnished in a single operative session, payment is based on—

(A) The full rate for the procedure with the highest prospectively determined rate; and

(B) One half of the prospectively determined rate for each of the other procedures.

(3) *Deductibles and coinsurance.* Part B deductible and coinsurance amounts apply as specified in § 410.152 (a) and (i) of this chapter.

**§ 416.125 ASC facility services payment rate.**

(a) The payment rate is based on a prospectively determined standard overhead amount per procedure derived from an estimate of the costs incurred by ambulatory surgical centers generally in providing services furnished in connection with the performance of that procedure.

(b) The payment must be substantially less than would have been paid under the program if the procedure had been performed on an inpatient basis in a hospital.

**§ 416.130 [Amended]**

8a. In § 416.130, "will publish", wherever it appears, is changed to "publishes", and "will also explain" is changed to "also explains".

8b. In § 416.140, the section heading and paragraph (a) are revised, and a



heading is provided for paragraph (b), to read as follows:

**§ 416.140 Surveys.**

(a) *Timing, purpose, and procedures.*

(1) No more often than once a year, HCFA conducts a survey of a randomly selected sample of participating ASCs to collect data for analysis or reevaluation of payment rates.

(2) HCFA notifies the selected ASCs by mail of their selection and of the form and content of the report the ASCs are required to submit within 60 days of the notice.

(3) If the facility does not submit an adequate report in response to HCFA's survey request, HCFA may terminate the agreement to participate in the Medicare program as an ASC.

(4) HCFA may grant a 30-day postponement of the due date for the survey report if it determines that the facility has demonstrated good cause for the delay.

(b) *Requirements for ASCs.* \* \* \*

G. Part 424.

**PART 424—CONDITIONS FOR MEDICARE PAYMENT**

1. The authority citation continues to read as follows:

Authority: Secs. 216(j), 1102, 1814, 1815(c), 1835, 1842(b), 1861, 1866(d), 1870 (e) and (f), 1871, and 1872 of the Social Security Act (42 U.S.C. 416(j), 1302, 1395f, 1395g(c), 1395n, 1395u(b), 1395x, 1395cc(d), 1395gg (e) and (f), 1395hh, and 1395ii).

2. In § 424.11, the introductory text of paragraph (e) is republished and paragraph (e)(3) is revised to read as follows:

**§ 424.11 General procedures.**

(e) *Limitation on authorization to sign statements.* A physician certification or recertification statement may be signed only by one of the following:

(3) A doctor of podiatric medicine if his or her certification is consistent with the functions he or she is authorized to perform under State law.

3. Section 424.22 is amended to revise paragraphs (a)(1)(iii) and (a)(1)(iv) and to remove and reserve paragraph (c), to read as follows:

**§ 424.22 Requirements for home health services.**

(a) *Certification—*

(1) Content of certification. \* \* \*

(iii) A plan for furnishing the services has been established and is periodically reviewed by a physician who is a doctor

of medicine, osteopathy, or podiatric medicine, and who is not precluded from performing this function under paragraph (d) of this section. (A doctor of podiatric medicine may perform only plan of treatment functions that are consistent with the functions he or she is authorized to perform under State law.)

(iv) The services were furnished while the individual was under the care of a physician who is a doctor of medicine, osteopathy, or podiatric medicine.<sup>1</sup>

4. Section 424.24 is amended to revise paragraphs (a), (b), and (c)(1), redesignate paragraph (e) as (f), and add a new paragraph (e), to read as follows:

**§ 424.24 Requirements for medical and other health services under Medicare Part B.**

(a) *Exempted services.* Certification is not required for the following: (1) Hospital services and supplies incident to physicians' services furnished to outpatients. The exemption applies to drugs and biologicals that cannot be self-administered, but not to partial hospitalization services, as set forth in paragraph (e) of this section.

(2) Outpatient hospital diagnostic services, including necessary drugs and biologicals, ordinarily furnished or arranged for by a hospital for the purpose of diagnostic study.

(3) Outpatient physical therapy services furnished in the patient's home or in the practitioner's office, by or under the direct supervision of a qualified physical therapist in independent practice. (See § 424.25 for plan of treatment requirements applicable to these services.)

(b) *General rule.* Medicare Part B pays for medical and other health services not exempted under paragraph (a) of this section only if a physician certifies the content specified in paragraph (c)(1), (c)(4), (d), (e) or (f)(1) of this section, as appropriate.

(c) *Outpatient physical therapy and speech pathology services—*(1) *Content of certification.* (i) The individual needs, or needed, physical therapy or speech pathology services.

(ii) The services were furnished while the individual was under the care of a physician. (For physical therapy services furnished after July 17, 1984, the physician may be a doctor of podiatric medicine, provided the services are consistent with the functions he or she is authorized to perform under State law.)

<sup>1</sup> As a condition of Medicare Part A payment for home health services furnished before July 1981, the physician was also required to certify that the services were needed for a condition for which the individual had received inpatient hospital or SNF services.

(iii) The services were furnished under a plan of treatment that meets the requirements of § 424.25.

(e) *Partial hospitalization services: Content of certification and plan of treatment requirements—*(1) *Content of certification.* (i) The individual would require inpatient psychiatric care if the partial hospitalization services were not provided.

(ii) The services are or were furnished while the individual was under the care of a physician.

(iii) The services were furnished under a written plan of treatment that meets the requirements of paragraph (e)(2) of this section.

(2) *Plan of treatment requirements.* (i) The plan is an individualized plan that is established and is periodically reviewed by a physician in consultation with appropriate staff participating in the program, and that sets forth—  
(A) The physician's diagnosis;  
(B) The type, amount, duration, and frequency of the services; and  
(C) The treatment goals under the plan.

(ii) The physician determines the frequency and duration of the services taking into account accepted norms of medical practice and a reasonable expectation of improvement in the patient's condition.

**H PART 430—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS**

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

**§ 430.2 [Amended]**

2. In paragraph (b), the listing of part 16 is changed to read:

Part 16—Procedures of the Departmental Appeals Board.

**§ 430.3 [Amended]**

3. In paragraph (b), "Departmental Grants Appeals Board" is changed to "Departmental Appeals Board".

**§ 430.20 [Amended]**

4. a. In paragraph (b)(1), the following is inserted immediately before "or": "increases the payment amounts for services already included in the plan."

b. Paragraph (b)(2) is redesignated as paragraph (b)(3).

c. A new paragraph (b)(2) is added to read as follows:

(b) \* \* \*

(2) For a plan amendment that changes the State's payment method



and standards, the rules of § 447.256 of this chapter apply.

5. A new § 430.25 is added to read as follows:

**§ 430.25 Waivers of State plan requirements.**

(a) *Scope of section.* This section describes the purpose and effect of waivers, identifies the requirements that may be waived and the other regulations that apply to waivers, and sets forth the procedures that HCFA follows in reviewing and taking action on waiver requests.

(b) *Purpose of waivers.* Waivers are intended to provide the flexibility needed to enable States to try new or different approaches to the efficient and cost-effective delivery of health care services, or to adapt their programs to the special needs of particular areas or groups of recipients. Waivers allow exceptions to State plan requirements and permit a State to implement innovative programs or activities on a time-limited basis, and subject to specific safeguards for the protection of recipients and the program. Detailed rules for waivers are set forth in subpart B of part 431, subpart A of part 440, and subpart G of part 441 of this chapter.

(c) *Effect of waivers.* (1) Waivers under section 1915(b) allow a State to take the following actions:

(i) Implement a primary care case-management system or a specialty physician system.

(ii) Designate a locality to act as central broker in assisting Medicaid recipients to choose among competing health care plans.

(iii) Share with recipients (through provision of additional services) cost-savings made possible through the recipients' use of more cost-effective medical care.

(iv) Limit recipients' choice of providers (except in emergency situations and with respect to family planning services) to providers that fully meet reimbursement, quality, and utilization standards, which are established under the State plan and are consistent with access, quality, and efficient and economical furnishing of care.

(2) A waiver under section 1915(c) of the Act allows a State to include as "medical assistance" under its plan home and community based services furnished to recipients who would otherwise need inpatient care that is furnished in a hospital, SNF, ICF, or ICF/MR, and is reimbursable under the State plan.

(3) A waiver under section 1916 (a)(3) or (b)(3) of the Act allows a State to impose a deduction, cost-sharing or

similar charge of up to twice the "nominal charge" established under the plan for outpatient services, if—

(i) The outpatient services are received in a hospital emergency room but are not emergency services; and

(ii) The State has shown that Medicaid recipients have actually available and accessible to them alternative services of nonemergency outpatient services.

(d) *Requirements that are waived.* In order to permit the activities described in paragraph (c) of this section, one or more of the title XIX requirements must be waived, in whole or in part.

(1) Under section 1915(b) of the Act, and subject to certain limitations, any of the State plan requirements of section 1902 of the Act may be waived to achieve one of the purposes specified in that section.

(2) Under section 1915(c) of the Act, the following requirements may be waived:

(i) Statewideness—section 1902(a)(1).

(ii) Comparability of services—section 1902(a)(10)(B).

(iii) Income and resource rules—section 1902(a)(10)(C)(i)(III).

(3) Under section 1916 of the Act, paragraphs (a)(3) and (b)(3) require that any cost-sharing imposed on recipients be nominal in amount, and provide an exception for nonemergency services furnished in a hospital emergency room if the conditions of paragraph (c)(3) of this section are met.

(e) *Submission of waiver request.* (1) The State Governor, the head of the Medicaid agency, or an authorized designee may submit the waiver request.

(f) *Review of waiver requests.* (1) This paragraph applies to initial waiver requests and to requests for renewal or amendment of a previously approved waiver.

(2) HCFA regional and central office staff review waiver requests and submit a recommendation to the Administrator, who—

(i) Has the authority to approve or deny waiver requests; and

(ii) Does not deny a request without first consulting the Secretary.

(3) A waiver request is considered approved unless, within 90 days after the request is received by HCFA, the Administrator denies the request, or the Administrator or the Regional Administrator sends the State a written request for additional information necessary to reach a final decision. If additional information is requested, a new 90-day period begins on the day the response to the additional information request is received by the addressee.

(g) *Basis for approval.*—(1) *Waivers under section 1915 (b) and (c).* The

Administrator approves waiver requests if the State's proposed program or activity meets the requirements of the Act and the regulations at § 431.55 or subpart G of part 441 of this chapter.

(2) *Waivers under section 1916.* The Administrator approves a waiver under section 1916 of the Act if the State shows, to HCFA's satisfaction, that the Medicaid recipients have available and accessible to them sources, other than a hospital emergency room, where they can obtain necessary nonemergency outpatient services.

(h) *Effective date and duration of waivers.*—(1) *Effective date.* Waivers receive a prospective effective date determined, with State input, by the Administrator. The effective date is specified in the letter of approval to the State.

(2) *Duration of waivers.*—(i) *Home and community-based services under section 1915(c).* The initial waiver is for a period of three years and may be renewed thereafter for periods of five years.

(ii) *Waivers under sections 1915(b) and 1916.* The initial waiver is for a period of two years and may be renewed for additional periods of up to two years as determined by the Administrator.

(3) *Renewal of waivers.* (i) A renewal request must be submitted at least 90 days (but not more than 120 days) before a currently approved waiver expires, to provide adequate time for HCFA review.

(ii) If a renewal request for a section 1915(c) waiver proposes a change in services provided, eligible population, service area, or statutory sections waived, the Administrator may consider it a new waiver, and approve it for a period of three years.

**§ 430.33 [Amended]**

6. In paragraph (c)(2), the word "Grant" is removed.

**§ 430.42 [Amended]**

7.a. In paragraph (b)(1), the word "Grant" is removed.

b. In the introductory text of paragraph (b)(2), "Chairperson" is changed to "Chair", and the word "Grants" is removed.

**I. Part 431**

**PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION**

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).



2. Subpart B is revised to read as follows:

**Subpart B—General Administrative Requirement**

- 431.40 Basis and scope.
- 431.50 Statewide operation.
- 431.51 Free choice of providers.
- 431.52 Payments for services furnished out of State.
- 431.53 Assurance of transportation.
- 431.54 Exceptions to certain State plan requirements.
- 431.55 Waiver of other Medicaid requirements.
- 431.56 Special waiver provisions applicable to American Samoa.

**Subpart B—General Administrative Requirements**

**§ 431.40 Basis and scope.**

(a) This subpart sets forth State plan requirements and exceptions that pertain to the following administrative requirements and provisions of the Act:

- (1) Statewide operation—section 1902(a)(1);
- (2) Proper and efficient administration—section 1902(a)(4);
- (3) Comparability of services—section 1902(a)(10) (B)-(E);
- (4) Payment for services furnished outside the State—section 1902(a)(16);
- (5) Free choice of providers—section 1902(a)(23);
- (6) Special waiver provisions applicable to American Samoa and the Northern Mariana Islands—section 1902(j); and
- (7) Exceptions to, and waiver of, State plan requirements—sections 1915 (a)-(c) and 1916 (a)(3) and (b)(3).

(b) Other applicable regulations include the following:

- (1) Section 430.25 Waivers of State plan requirements.
- (2) Section 440.250 Limits on comparability of services.

**§ 431.50 Statewide operation.**

(a) *Statutory basis.* Section 1902(a)(1) of the Act requires a State plan to be in effect throughout the State, and section 1915 permits certain exceptions.

(b) *State plan requirements.* A State plan must provide that the following requirements must be met:

- (1) The plan will be in operation statewide through a system of local offices, under equitable standards for assistance and administration that are mandatory throughout the State.
- (2) If administered by political subdivisions of the State, the plan will be mandatory on those subdivisions.
- (3) The agency will ensure that the plan is continuously in operation in all local offices or agencies through—
- (i) Methods for informing staff of State policies, standards, procedures, and instructions;

- (ii) Systematic planned examination and evaluation of operations in local offices by regularly assigned State staff who make regular visits; and
- (iii) Reports, controls, or other methods.

(c) *Exceptions.* (1) "Statewide operation" does not mean, for example, that every source of service must furnish the service State-wide. The requirement does not preclude the agency from contracting with a comprehensive health care organization (such as an HMO or a rural health clinic) that serves a specific area of the State, to furnish services to Medicaid recipients who live in that area and chose to receive services from that HMO or rural health clinic. Recipients who live in other parts of the State may receive their services from other sources.

(2) Other allowable exceptions and waivers are set forth in §§ 431.54 and 431.55.

**§ 431.51 Free choice of providers.**

(a) *Statutory basis.* This section is based on sections 1902(a)(23), 1902(e)(2), and 1915 (a) and (b) of the Act.

(1) Section 1902(a)(23) of the Act provides that recipients may obtain services from any qualified Medicaid provider that undertakes to provide the services to them.

(2) Section 1915(a) of the Act provides that a State shall not be found out of compliance with section 1902(a)(23) solely because it imposes certain specified allowable restrictions on freedom of choice.

(3) Section 1915(b) of the Act authorizes waiver of the section 1902(a)(23) freedom of choice of providers requirement in certain specified circumstances, but not with respect to providers of family planning services.

(4) Section 1902(a)(23), as amended by section 4113(c) of OBRA '87, provides that, for services furnished after June 1988, a recipient enrolled in a primary care case-management system, an HMO, or a similar entity, may not be denied freedom of choice of qualified providers of family planning services.

(5) Section 1902(e)(2), as amended by section 4113(c)(2) of OBRA '87, provides that HMO enrollees deemed eligible only for services furnished by the HMO (while they complete a minimum enrollment period) may, as an exception, seek family planning services from any qualified provider.

(b) *State plan requirements.* A State plan, except the plan for Puerto Rico, the Virgin Islands, or Guam, must provide as follows:

(1) Except as provided under paragraph (c) of this section, a recipient

may obtain Medicaid services from any institution, agency, pharmacy, person, or organization that is—

- (i) Qualified to furnish the services; and
- (ii) Willing to furnish them to that particular recipient.

This includes an organization that furnishes, or arranges for the furnishing of, Medicaid services on a prepayment basis.

(2) A recipient enrolled in a primary care case-management system, an HMO, or other similar entity will not be restricted in freedom of choice of providers of family planning services.

(c) *Exceptions.* Paragraph (b) of this section does not prohibit the agency from—

(1) Establishing the fees it will pay providers for Medicaid services;

(2) Setting reasonable standards relating to the qualifications of providers; or

(3) Subject to paragraph (b)(2) of this section, restricting recipients' free choice of providers in accordance with one or more of the exceptions set forth in § 431.54, or under a waiver as provided in § 431.55.

(d) *Certification requirement.* (1) *Content of certification.* If a State implements a project under one of the exceptions allowed under § 431.54 (d), (e) or (f), it must certify to HCFA that the statutory safeguards and requirements for an exception under section 1915(a) of the Act are met.

(2) *Timing of certification.* (i) For an exception under § 431.54(d), the State may not institute the project until after it has submitted the certification and HCFA has made the findings required under the Act, and so notified the State.

(ii) For exceptions under § 431.54 (e) or (f), the State must submit the certificate by the end of the quarter in which it implements the project.

**§ 431.52 Payments for services furnished out of State.**

(a) *Statutory basis.* Section 1902(a)(16) of the Act authorizes the Secretary to prescribe State plan requirements for furnishing Medicaid to State residents who are absent from the State.

(b) *Payment for services.* A State plan must provide that the State will pay for services furnished in another State to the same extent that it would pay for services furnished within its boundaries if the services are furnished to a recipient who is a resident of the State, and any of the following conditions is met:

- (1) Medical services are needed because of a medical emergency;



(2) Medical services are needed and the recipient's health would be endangered if he were required to travel to his State of residence;

(3) The State determines, on the basis of medical advice, that the needed medical services, or necessary supplementary resources, are more readily available in the other State;

(4) It is general practice for recipients in a particular locality to use medical resources in another State.

(c) *Cooperation among States.* The plan must provide that the State will establish procedures to facilitate the furnishing of medical services to individuals who are present in the State and are eligible for Medicaid under another State's plan.

#### § 431.53 Assurance of transportation.

A State plan must—

(a) Specify that the Medicaid agency will ensure necessary transportation for recipients to and from providers; and

(b) Describe the methods that the agency will use to meet this requirement.

(Sec. 1902(a)(4) of the Act)

#### § 431.54 Exceptions to certain State plan requirements.

(a) *Statutory basis.* Section 1915(a) of the Act provides that a State shall not be deemed to be out of compliance with the requirements of sections 1902(a) (1), (10), or (23) of the Act solely because it has elected any of the exceptions set forth in paragraphs (b) and (d) through (f) of this section.

(b) *Additional services under a prepayment system.* If the Medicaid agency contracts on a prepayment basis with an organization that provides services additional to those offered under the State plan, the agency may restrict the provision of the additional services to recipients who live in the area served by the organization and wish to obtain services from it.

(c) [Reserved]

(d) *Special procedures for purchase of medical devices and laboratory and X-ray tests.* The Medicaid agency may establish special procedures for the purchase of medical devices or laboratory and X-ray tests (as defined in § 440.30 of this chapter) through a competitive bidding process or otherwise, if the State assures, in the certification required under § 431.51(d), and HCFA finds, as follows:

(1) Adequate services or devices are available to recipients under the special procedures.

(2) Laboratory services are furnished through laboratories that meet the following requirements:

(i) They are independent laboratories, or inpatient or outpatient hospital laboratories that provide services for individuals who are not hospital patients, or physician laboratories that process at least 100 specimens for other physicians during any calendar year.

(ii) They meet the requirements of subpart M of part 405 or part 482 of this chapter.

(iii) Laboratories that require an interstate license under 42 CFR part 74 are licensed by HCFA or receive an exemption from the licensing requirement by the College of American Pathologists. (Hospital and physician laboratories may participate in competitive bidding only with regard to services to non-hospital patients and other physicians' patients, respectively.)

(3) Any laboratory from which a State purchases services under this section has no more than 75 percent of its charges based on services to Medicare beneficiaries and Medicaid recipients.

(e) *Lock-in of recipients who over-utilize Medicaid services.* If a Medicaid agency finds that a recipient has utilized Medicaid services at a frequency or amount that is not medically necessary, as determined in accordance with utilization guidelines established by the State, the agency may restrict that recipient for a reasonable period of time to obtain Medicaid services from designated providers only. The agency may impose these restrictions only if the following conditions are met:

(1) The agency gives the recipient notice and opportunity for a hearing (in accordance with procedures established by the agency) before imposing the restrictions.

(2) The agency ensures that the recipient has reasonable access (taking into account geographic location and reasonable travel time) to Medicaid services of adequate quality.

(3) The restrictions do not apply to emergency services furnished to the recipient.

(f) *Lock-out of providers.* If a Medicaid agency finds that a Medicaid provider has abused the Medicaid program, the agency may restrict the provider, through suspension or otherwise, from participating in the program for a reasonable period of time.

Before imposing any restriction, the agency must meet the following conditions:

(1) Give the provider notice and opportunity for a hearing, in accordance with procedures established by the agency.

(2) Find that in a significant number or proportion of cases, the provider has:

(i) Furnished Medicaid services at a frequency or amount not medically

necessary, as determined in accordance with utilization guidelines established by the agency; or

(ii) Furnished Medicaid services of a quality that does not meet professionally recognized standards of health care.

(3) Notify HCFA and the general public of the restriction and its duration.

(4) Ensure that the restrictions do not result in denying recipients reasonable access (taking into account geographic location and reasonable travel time) to Medicaid services of adequate quality, including emergency services.

#### § 431.55 Waiver of other Medicaid requirements.

(a) *Statutory basis.* Section 1915(b) of the Act, authorizes the Secretary to waive the requirements of sections 1902 of the Act to the extent he or she finds proposed improvements or specified practices in the provision of services under Medicaid to be cost-effective, efficient, and consistent with the objectives of the Medicaid program. Sections 1915 (e), (f), and (h) of the Act prescribe how such waivers are to be approved, continued, monitored, and terminated. Sections 1918 (a)(3) and (b)(3) of the Act specify the circumstances under which the Secretary is authorized to waive the requirement that cost-sharing amounts be nominal.

(1) General requirements for submittal of waiver requests, and the procedures that HCFA follows for review and action on those requests are set forth in § 430.25 of this chapter.

(2) In applying for a waiver to implement an approvable project under paragraph (c), (d), (e), or (f) of this section, a Medicaid agency must document in the waiver request and maintain data regarding:

(i) The cost-effectiveness of the project;

(ii) The effect of the project on the accessibility and quality of services; and

(iii) The anticipated impact of the project on the State's Medicaid program.

(3) No waiver under this section may be granted for a period longer than 2 years, unless the agency requests a continuation of the waiver.

(4) HCFA monitors the implementation of waivers granted under this section to ensure that requirements for such waivers are being met.

(i) If monitoring demonstrates that the agency is not in compliance with the requirements for a waiver under this section, HCFA gives the agency notice and opportunity for a hearing.



(ii) If, after a hearing, HCFA finds an agency to be out of compliance with the requirements of a waiver, HCFA terminates the waiver and gives the agency a specified date by which it must demonstrate that it meets the applicable requirements of section 1902 of the Act.

(c) *Case-management system.* (1) Waivers of appropriate requirements of section 1902 of the Act may be authorized for a State to implement a primary care case-management system or specialty physician services system.

(i) Under a primary care case-management system the agency assures that a specific person or persons or agency will be responsible for locating, coordinating, and monitoring all primary care or primary care and other medical care and rehabilitative services on behalf of a recipient.

(ii) A specialty physician services system allows States to restrict recipients of specialty services to designated providers of such services, even in the absence of a primary care case-management system.

(2) A waiver under this paragraph (c) may not be approved unless the State's request assures that the restrictions—

(i) Do not apply in emergency situations; and

(ii) Do not substantially impair access to medically necessary services of adequate quality.

(d) *Locality as central broker.*

Waivers of appropriate requirements of section 1902 of the Act may be authorized for a State to allow a locality to act as a central broker to assist recipients in selecting among competing health care plans. States must ensure that access to medically necessary services of adequate quality is not substantially impaired.

(1) A locality is any defined jurisdiction, e.g., district, town, city, borough, county, parish, or State.

(2) A locality may use any agency or agent, public or private, profit or nonprofit, to act on its behalf in carrying out its central broker function.

(e) *Sharing of cost savings.* (1) Waivers of appropriate requirements of section 1902 of the Act may be authorized for a State to share with recipients the cost savings resulting from the recipients' use of more cost-effective medical care.

(2) Sharing is through the provision of additional services, including—

(i) Services furnished by a plan selected by the recipient; and

(ii) Services expressly offered by the State as an inducement for recipients to participate in a primary care case-management system, a competing health care plan or other system that furnishes

health care services in a more cost-effective manner.

(f) *Restriction of freedom of choice—*

(1) Waiver of appropriate requirements of section 1902 of the Act may be authorized for States to restrict recipients to obtaining services from (or through) qualified providers or practitioners that meet, accept, and comply with the State reimbursement, quality and utilization standards specified in the State's waiver request.

(2) An agency may qualify for a waiver under this paragraph (f) only if its applicable State standards are consistent with access, quality and efficient and economic provision of covered care and services and the restrictions it imposes—

(i) Do not apply to recipients residing at a long-term care facility when a restriction is imposed unless the State arranges for reasonable and adequate recipient transfer.

(ii) Do not discriminate among classes of providers on grounds unrelated to their demonstrated effectiveness and efficiency in providing those services; and

(iii) Do not apply in emergency circumstances.

(3) Demonstrated effectiveness and efficiency refers to reducing costs or slowing the rate of cost increase and maximizing outputs or outcomes per unit of cost.

(g) *Cost sharing requirement.* (1) Under sections 1916(a)(3) and (b)(3) of the Act, for nonemergency services furnished in a hospital-emergency room, the Secretary may by waiver permit a State to impose a copayment of up to double the "nominal" copayment amounts determined under § 447.54(a)(3) of this chapter.

(2) Nonemergency services are services that do not meet the definition of emergency services at § 447.53(b)(4) of this chapter.

(3) In order for a waiver to be approved under this paragraph (g), the State must establish to the satisfaction of HCFA, that alternative sources of nonemergency, outpatient services are available and accessible to recipients.

(4) Although, in accordance with paragraph (b)(3) of this section, a waiver will generally be granted for a 2 year duration, HCFA will re-evaluate waivers approved under this paragraph (g) if the State increases the nominal copayment amounts in effect when the waiver was approved.

(5) A waiver approved under this paragraph cannot apply to services furnished before the waiver was granted.

#### § 431.56 Special waiver provisions applicable to American Samoa and the Northern Mariana Islands.

(a) *Statutory basis.* Section 1902(j) of the Act provides for waiver of all but three of the title XIX requirements, in the case of American Samoa and the Northern Mariana Islands.

(b) *Waiver provisions.* American Samoa or the Northern Mariana Islands may request, and HCFA may approve, a waiver of any of the title XIX requirements except the following:

(1) The Federal medical assistance percentage specified in section 1903 of the Act and § 433.10(b) of this chapter.

(2) The limit imposed by section 1108(c) of the Act on the amount of Federal funds payable to American Samoa or the Northern Mariana Islands for care and services that meet the section 1905(a) definition for Medicaid assistance.

(3) The requirement that payment be made only with respect to expenditure made by American Samoa or the Northern Mariana Islands for care and services that meet the section 1905(a) definition of medical assistance.

J. Part 435.

#### PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 435.212 is revised to read as follows:

#### § 435.212 Individuals who would be ineligible if they were not enrolled in an HMO.

The agency may provide that a recipient who is enrolled in a federally qualified HMO (under a risk contract as specified in § 434.20(a)(1) of this chapter) and who becomes ineligible for Medicaid is considered to continue to be eligible—

(a) For a period specified by the agency, ending no later than 6 months from the date of enrollment; and

(b) Except for family planning services (which the recipient may obtain from any qualified provider) only for services furnished to him or her as an HMO enrollee.

3. Section 435.725 is amended to revise paragraphs (a), (c)(1) introductory text, (c)(1) (i) and (ii), (c)(4), (c)(5), and (d), to read as follows:



**§ 435.725 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care.**

(a) *Basic rules.* (1) The agency must reduce its payment to an institution, for services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragraphs (c) and (d) of this section, from the individual's total income.

(2) The individual's income must be determined in accordance with paragraph (e) of this section.

(3) Medical expenses must be determined in accordance with paragraph (f) of this section.

*(c) Required deductions. \* \* \**

(1) *Personal needs allowance.* A personal needs allowance that is reasonable in amount for clothing and other personal needs of the individual while in the institution. This protected personal needs allowance must be at least—

(i) \$30 a month for an aged, blind, or disabled individual, including a child applying for Medicaid on the basis of blindness or disability;

(ii) \$60 a month for an institutionalized couple if both spouses are aged, blind, or disabled and their income is considered available to each other in determining eligibility; and

(4) *Expenses not subject to third party payment.* Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(ii) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses.

(5) *Continued SSI and SSP benefits.* The full amount of SSI and SSP benefits that the individual continues to receive under sections 1611(e)(1) (E) and (G) of the Act.

(d) *Optional deduction: Allowance for home maintenance.* For single individuals and couples, an amount (in addition to the personal needs allowance) for maintenance of the individual's or couple's home if—

(1) The amount is deducted for not more than a 6-month period; and

(2) A physician has certified that either of the individuals is likely to return to the home within that period.

4. Section 435.733 is amended to revise paragraphs (a), (c)(1) introductory text, (c)(1) (i) and (ii), (c)(4), (c)(5), and (d), to read as follows:

**§ 435.733 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to cost of care.**

(a) *Basic rules.* (1) The agency must reduce its payment to an institution, for services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragraphs (c) and (d) of this section, from the individual's total income.

(2) The individual's income must be determined in accordance with paragraph (e) of this section.

(3) Medical expenses must be determined in accordance with paragraph (f) of this section.

*(c) Required deductions. \* \* \**

(1) *Personal needs allowance.* A personal needs allowance that is reasonable in amount for clothing and other personal needs of the individual while in the institution. This protected personal needs allowance must be at least—

(i) \$30 a month for an aged, blind, or disabled individual, including a child applying for Medicaid on the basis of blindness or disability;

(ii) \$60 a month for an institutionalized couple if both spouses are aged, blind, or disabled and their income is considered available to each other in determining eligibility; and

(4) *Expenses not subject to third party payment.* Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(ii) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses.

(5) *Continued SSI and SSP benefits.* The full amount of SSI and SSP benefits that the individual continues to receive under sections 1611(e)(1) (E) and (G) of the Act.

(d) *Optional deduction: Allowance for home maintenance.* For single individuals and couples, an amount (in addition to the personal needs allowance) for maintenance of the individual's or couple's home if—

(1) The amount is deducted for not more than a 6-month period; and

(2) A physician has certified that either of the individuals is likely to return to the home within that period.

5. Section 435.832 is amended to revise paragraphs (a), (c)(1) introductory text, (c)(1) (i) and (ii) (c)(4), and (d), to read as follows:

**§ 435.832 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care.**

(a) *Basic rules.* (1) The agency must reduce its payment to an institution, for services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragraphs (c) and (d) of this section, from the individual's total income.

(2) The individual's income must be determined in accordance with paragraph (e) of this section.

(3) Medical expenses must be determined in accordance with paragraph (f) of this section.

*(c) Required deductions. \* \* \**

(1) *Personal needs allowance.* A personal needs allowance that is reasonable in amount for clothing and other personal needs of the individual while in the institution. This protected personal needs allowance must be at least—

(i) \$30 a month for an aged, blind, or disabled individual, including a child applying for Medicaid on the basis of blindness or disability.

(ii) \$60 a month for an institutionalized couple if both spouses are aged, blind, or disabled and their income is considered available to each other in determining eligibility; and

(4) *Expenses not subject to third party payment.* Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(ii) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses.

(d) *Optional deduction: Allowance for home maintenance.* For single individuals and couples, an amount (in addition to the personal needs allowance) for maintenance of the individual's or couple's home if—

(1) The amount is deducted for not more than a 6-month period; and



(2) A physician has certified that either of the individuals is likely to return to the home within that period.

K. Part 436.

#### PART 436—ELIGIBILITY IN GUAM, PUERTO RICO AND THE VIRGIN ISLANDS

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 436.832 is amended to revise paragraphs (a), (c)(1), (c)(4) and (d) to read as follows:

**§ 436.832 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to cost of care.**

(a) *Basic rules.* (1) The agency must reduce its payment to an institution, for services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragraphs (c) and (d) of this section from the individual's total income.

(2) The individual's income must be determined in accordance with paragraph (e) of this section.

(3) Medical expenses must be determined in accordance with paragraph (f) of this section.

(c) *Required deductions.* \* \* \*

(1) *Personal needs allowance.* A personal needs allowance that is reasonable in amount for clothing and other personal needs of the individual while in the institution. This protected personal needs allowance must be at least—

(i) \$30 a month for an aged, blind, or disabled individual, including a child applying for Medicaid on the basis of blindness or disability;

(ii) \$60 a month for an institutionalized couple if both spouses are aged, blind, or disabled and their income is considered available to each other in determining eligibility; and

(iii) For other individuals, a reasonable amount set by the agency, based on a reasonable difference in their personal needs from those of the aged, blind, or disabled.

(4) *Expenses not subject to third party payment.* Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(ii) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses.

(d) *Optional deduction: Allowance for home maintenance.* For single individuals and couples, an amount (in addition to the personal needs allowance) for maintenance of the individual's or couple's home if—

(i) The amount is deducted for not more than a 6-month period; and

(ii) A physician has certified that either of the individuals is likely to return to the home within that period.

L. Part 440.

#### PART 440—SERVICES: GENERAL PROVISIONS

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 440.50 is revised to read as follows:

**§ 440.50 Physicians' services and medical and surgical services of a dentist.**

(a) "Physicians' services," whether furnished in the office, the recipient's home, a hospital, a skilled nursing facility, or elsewhere, means services furnished by a physician—

(1) Within the scope of practice of medicine or osteopathy as defined by State law; and

(2) By or under the personal supervision of an individual licensed under State law to practice medicine or osteopathy.

(b) "Medical and surgical services of a dentist" means medical and surgical services furnished, on or after January 1, 1988, by a doctor of dental medicine or dental surgery if the services are services that—

(1) If furnished by a physician, would be considered physician's services.

(2) Under the law of the State where they are furnished, may be furnished either by a physician or by a doctor of dental medicine or dental surgery; and

(3) Are furnished by a doctor of dental medicine or dental surgery who is authorized to furnish those services in the State in which he or she furnished the services.

3. Section 440.90 is revised to read as follows:

**§ 440.90 Clinic services.**

*Clinic services* means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that are furnished by a facility that is not part of a hospital

but is organized and operated to provide medical care to outpatients. The term includes the following services furnished to outpatients:

(a) Services furnished at the clinic by or under the direction of a physician or dentist.

(b) Services furnished outside the clinic, by clinic personnel under the direction of a physician, to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.

(c) Services furnished at the clinic that are nurse-midwife services, as defined in § 440.165.

M. Part 441.

#### PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

**§ 441.10 [Amended]**

2. Paragraph (f) of § 441.10 is revised to read as follows:

(f) Section 1903(i)(1) for organ transplant procedures, and 1903(i)(5) for certain prescribed drugs.

3. A new § 441.35 is added, to read as follows:

**§ 441.35 Organ transplants.**

(a) FFP is available in expenditures for services furnished in connection with organ transplant procedures only if the State plan includes written standards for the coverage of those procedures, and those standards provide that—

(1) Similarly situated individuals are treated alike; and

(2) Any restriction on the practitioners or facilities that may provide organ transplant procedures is consistent with the accessibility of high quality care to individuals eligible for the procedures under the plan.

(b) Nothing in paragraph (a) permits a State to provide, under its plan, services that are not reasonable in amount, duration, and scope to achieve their purpose.

N. Part 482.

#### PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1138, 1814(a)(6), 1861 (e), (f), (k), (r), (v)(1)(G), (z), and (ee), 1864, 1871, 1883, 1886, 1902(a)(30), and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1338, 1395f(a)(6), 1395x (e), (f), (k), (r), (v)(1)(G), (z),



and (ee), 1395aa, 1395hh, 1395tt, 1395ww, 1396a(a)(30), and 1396(a)).

2. In § 482.12, the introductory text of paragraph (c) is republished and paragraphs (c)(1) introductory text, (c)(2) and (c)(4) are revised to read as follows:

**§ 482.12 Condition of participation: Governing body.**

(c) *Standard: Care of patients.* In accordance with hospital policy, the governing body must ensure that the following requirements are met:

(1) Every Medicare patient is under the care of:

(2) Patients are admitted to the hospital only on the recommendation of a licensed practitioner permitted by the State to admit patients to a hospital. If a Medicare patient is admitted by a practitioner not specified in paragraph (c)(1) of this section, that patient is under the care of a doctor of medicine or osteopathy.

(4) A doctor of medicine or osteopathy is responsible for the care of each Medicare patient with respect to any medical or psychiatric problem that is present on admission or develops during hospitalization and that is not specifically within the scope of practice, as defined by the medical staff and permitted by State law and as limited by paragraphs (c)(1) (iv) and (v) of this section, of any of the practitioners specified in paragraphs (c)(1) (ii) through (v) of this section.

O. Part 485.

**PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS**

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1861 (aa) and (cc), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x (aa) and (cc), and 1395(hh)).

2. The § 485.58, paragraph (e) is revised to read as follows:

**§ 485.58 Condition of participation: Comprehensive rehabilitation program.**

(e) *Standard: Scope and site of*

*services*—(1) *Basic requirements.* The facility must provide all the CORF services required in the plan of treatment and, except as provided in paragraph (e)(2) of this section, must provide the services on its premises.

(2) *Exceptions.* Physical therapy, occupational therapy, and speech pathology services furnished away from the premises of the CORF may be covered as CORF services if Medicare payment is not otherwise made for these services. In addition, a single home visit is covered if there is need to evaluate the potential impact of the home environment on the rehabilitation goals.

P. Part 489

Q. Technical Amendments.

1. Nomenclature Changes. Throughout this chapter IV, all references to "section 1910(c) of the Act" are changed to "section 1910(b) of the Act".

**PART 400—INTRODUCTION; DEFINITIONS**

1. The authority citation for part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. chapter 35.

**§ 400.200 [Amended]**

2. In § 400.200, the following statements are added in alphabetical order:

*CMF* stands for competitive medical plan.

*Conditions of participation* includes requirements for participation as the latter term is used in part 483 of this chapter.

*Condition level deficiencies* includes deficiencies with respect to "level A requirements" as the latter term is used in parts 442 and 483 of this chapter.

*CORF* stands for comprehensive outpatient rehabilitation facility.

*HCPP* stands for health care prepayment plan.

*ICF/MR* stands for intermediate care facility for the mentally retarded.

*OIG* stands for the Department's Office of the Inspector General.

**§ 400.202 [Amended]**

3. In § 400.202, in the definition of

*Provider*, the phrase "effective November 1, 1983 through September 30, 1986," is removed.

**§ 400.203 [Amended]**

4. In § 400.203, the definition of *Services* is revised to read: *Services* means the types of medical assistance specified in section 1905(a) of the Act and defined in subpart A of part 440 of this chapter.

**§ 408.24 [Amended]**

5. In § 408.24, in paragraphs (a)(6)(ii) and (a)(7)(ii), "section 9319(c) of Pub. L. 99-509" is changed to "section 1837(i) of the Act".

**§ 410.24 [Amended]**

6. In § 410.24, the superscript for the footnote in the text and in the footnote is changed from "6" to "1".

**§ 410.60 [Amended]**

7. In § 410.60, the following changes are made:

(a) In paragraph (a)(2), "subpart B of part 424 of this chapter" is changed to "§ 410.63".

(b) In paragraph (c)(2), the superscript for the footnote in the text and in the footnote is changed from "7" to "2".

**§ 410.62 [Amended]**

8. In § 410.62, in paragraph (a)(2)(iii), "subpart B of part 424 of this chapter" is changed to "§ 410.63".

**§ 410.160 [Amended]**

9. In § 410.160, in paragraph (b)(1), the superscript for the footnote in the text and in the footnote is changed from "8" to "3".

**§ 410.161 [Amended]**

10. In § 410.161, the following changes are made:

a. In paragraph (a)(3), "Part A or" is inserted before "Part B", and the following sentence is added at the end: "The Part B blood deductible is reduced to the extent that a blood deductible has been applied under Part A."

b. Paragraph (a)(6) is removed.



# **PART 417—HEALTH MAINTENANCE ORGANIZATIONS COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS**

1. The authority citation for part 417 continues to read as follows:

**Authority:** Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 1395l(a)(1)(A), 1395x(s)(2)(H), 1395hh, 1395kk, and 1395mm); sec. 114(c) of Pub. L. 97-248 (42 U.S.C. 1395mm note); 31 U.S.C. 9701; and secs. 215 and 1301 through 1318 of the Public Health Service Act (42 U.S.C. 216 and 300e through 300e-17), unless otherwise noted.

## **§ 417.104 [Amended]**

2. In § 417.104, the footnote to paragraph (e) is revised as follows:

<sup>1</sup> Further information entitled "Guidelines for Rating by Class" may be obtained from the Office of Prepaid Health Care, Division of Qualification Analysis, HHS Cohen Bldg., Room 4360, 330 Independence Ave. SW., Washington, DC 20201.

## **§ 417.107 [Amended]**

3. In § 417.107, the following changes are made:

- a. In paragraph (i), "42 CFR part 405" is changed to "part 405 of this chapter".
- b. Paragraph (j)(2)(i) is revised to read:  
(j) \* \* \*  
(2) \* \* \*

(i) A copy of the report, if any, filed with HCFA, containing the information that disclosing entities are required to report under §§ 420.206 and 455.104 of this chapter; and

## **§ 417.112 [Amended]**

4. In § 417.112, in the concluding text at the end of paragraph (d), the superscript "1" and the corresponding footnote are removed.

## **§ 417.144 [Amended]**

5. In § 417.144, paragraph (e) is revised to read as follows:

(e) The Secretary will publish on a monthly basis in the *Federal Register* the names, addresses, and descriptions of the service areas of the newly qualified HMOs. A cumulative list of qualified HMOs may be contained by writing the Document Control Unit, Office of Prepaid Health Care, Office of Compliance, HHS Cohen Bldg., room 4360, 330 Independence Ave., SW., Washington, DC 20201, or by visiting that Office between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Interested persons may contact that Office during those hours to make an appointment to obtain additional information regarding qualified HMOs.

## **§ 417.242 [Amended]**

6. In § 417.242, paragraph (b)(7) is removed and reserved and the footnote is also removed.

## **§ 417.243 [Amended]**

7. In § 417.243, paragraph (b), "§§ 405.480, 413.55, and 413.24" is changed to "§§ 405.480, 413.24, and 413.53".

## **§ 417.404 [Amended]**

8. In § 417.404, paragraph (b)(1), the last sentence is removed.

## **§ 417.406 [Amended]**

9. In § 417.406, the following changes are made:

- a. In paragraph (a)(2), "§ 110.604 of this title." is changed to "§ 417.143".
- b. In paragraph (a)(2)(i), "(f)" is removed.
- c. In paragraph (a)(2)(ii), the last three words "or an HMO" are removed.
- d. In paragraph (a)(3), "§ 110.605 (a) through (d) of this title" is changed to "§ 417.144 (a) through (d)", and "subpart A of part 110, and § 110.603" is changed to "§§ 417.100 through 417.109, and § 417.142".

## **§ 417.407 [Amended]**

10. In § 417.407, the following changes are made:

- a. In paragraph (b), "subpart A of part 110 of this title." is changed to "§§ 417.100 through 417.109".
- b. In paragraph (c)(4), "§ 110.108(b) of this title" is changed to "§ 417.107(b)".
- c. In paragraph (c)(5), "110.108(a)(1) (i) through (iv) and (a)(3) of this title." is changed to "§ 417.107(a)(1) (i) through (iv) and (a)(3)".

## **§ 417.408 [Amended]**

11. In § 417.408, paragraph (a) the designation of (a)(1) and paragraph (a)(2) are removed and the text is run together.

## **§ 417.418 [Amended]**

12. In § 417.418, paragraph (b), "§ 110.108(h) of this title." is changed to "§ 417.107(h)".

## **§ 417.478 [Amended]**

13. In § 417.478, paragraph (d), "§ 110.108(j)(1) of this title" is changed to "§ 417.107".

## **§ 417.522 [Amended]**

14. In § 417.522, paragraph (a)(3)(iii) is revised to read:

- (a) \* \* \*
- (3) \* \* \*
- (iii) The successor organization meets the requirements to qualify as an eligible organization under this subpart.

## **§ 417.594 [Amended]**

15. In § 417.594, paragraph (b)(1)(i), "§ 110.105(b) of this title;" is changed to "§ 417.104(b);".

## **§ 424.1 [Amended]**

16. In § 424.1, the following changes are made:

a. The heading "(c) *Other applicable rules*" is inserted immediately before the concluding text of paragraph (b) that begins "Except for \* \* \*".

b. The following sentence is added at the end of the newly designated paragraph (c):

(c) \* \* \*

The rules for physician certification of terminal illness, required in connection with hospice care, are set forth in § 418.22 of this chapter.

## **Subpart B—Physician Certification Requirements**

17. The heading of subpart B is revised to read as set forth above.

## **§ 424.10 [Amended]**

18. In § 424.10, the following changes are made:

- a. In paragraph (a), first sentence, "has a major role" is changed to "is the key figure".
- b. In paragraph (a), "1814(a)(2)" is changed to "1814(a) (2) and (3)".
- c. Paragraph (b) is revised to read as follows:

(b) *Scope.* This subpart sets forth the timing, content, and signature requirements for physician certification and recertification with respect to certain Medicare services furnished by providers.

19. In § 424.24, the following changes are made:

## **§ 424.24 Requirements for medical and other health services furnished by providers under Medicare Part B.**

a. The section heading is revised to read as set forth above.

b. Paragraph (a)(3) is removed.

c. Paragraph (b) is revised to read as follows:

(b) *General rule.* Medicare Part B pays for medical and other health services furnished by providers (and not exempted under paragraph (a) of this section) only if a physician certifies the content specified in paragraph (c)(1), (c)(4) or (e)(1) of this section, as appropriate.

d. Paragraph (d) is removed and reserved.



**§ 424.25 [Redesignated as § 410.63]**

20. Section 424.25 is redesignated as § 410.63.

**§ 435.725 [Amended]**

21. In § 435.725, the following changes are made:

a. In paragraph (c)(2), the following heading is inserted at the beginning of the paragraph: "Maintenance needs of spouse."

b. In paragraph (c)(3), the following heading is inserted at the beginning of the paragraph: "Maintenance needs of family."

**§ 435.733 [Amended]**

22. In § 435.733, the following changes are made:

a. In paragraph (c)(2), the following heading is inserted at the beginning of the paragraph: "Maintenance needs of spouse."

b. In paragraph (c)(3), the following heading is inserted at the beginning of the paragraph: "Maintenance needs of family."

**§ 435.832 [Amended]**

23. In § 435.832, the following changes are made:

a. In paragraph (c)(2), the following heading is inserted at the beginning of the paragraph: "Maintenance needs of spouse."

b. In paragraph (c)(3), the following heading is inserted at the beginning of the paragraph: "Maintenance needs of family."

**§ 435.1009 [Amended]**

24. In § 435.1009, in the first sentence of the definition of *Institution for mental disease*, "an institution" is changed to "a hospital, nursing facility, or other institution of more than 16 beds".

**§ 436.832 [Amended]**

25. In § 436.832, the following changes are made:

a. In paragraph (c)(2), the following heading is inserted at the beginning of the paragraph: "Maintenance needs of spouse."

b. In paragraph (c)(3), the following

heading is inserted at the beginning of the paragraph: "Maintenance needs of family."

**§ 440.110 [Amended]**

26. In paragraphs (a)(2)(i) and (b)(2)(ii), the phrase "Council on Medical Education" is changed to "Committee on Allied Health Education and Accreditation".

**§ 440.140 [Amended]**

27. In § 440.140(a)(2), "an institution" is changed to "a hospital, nursing facility, or other institution of more than 16 beds".

**§ 447.256 [Amended]**

28. In § 447.256, the following changes are made:

a. In paragraph (a), "45 CFR 201.2 and 201.3" is changed to "subpart B of part 430 of this chapter".

b. In paragraph (c), "45 CFR 201.3(g)" is changed to "subpart B of part 430 of this chapter".

**§ 455.20 [Amended]**

29. In § 455.20(b), "433.113 (e) and (f)" is changed to "§ 433.116 (e) and (f)".

**§ 489.66 [Amended]**

30. In § 489.66, in paragraph (a), the words "inpatient tuberculosis hospital services and" are removed, and "extended care services" is changed to "SNF care".

**PART 491—CERTIFICATION OF CERTAIN HEALTH FACILITIES**

31. The authority citation for part 491 continues to read as follows:

Authority: Sec. 1101 of the Social Security Act (42 U.S.C. 1302).

**§ 491.2 [Amended]**

32. In § 491.2, paragraph (d)(3), the phrase "has been assisting" is changed to "assisted", and "immediately preceding the effective date of this subpart" is changed to "that ended on December 31, 1986".

**PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM**

33. The authority citation for part 498 continues to read as follows:

Authority: Secs. 205(a), 1102, 1869(c) 1871, and 1872 of the Social Security Act (42 U.S.C. 405(a), 1302, 1395 ff(c), 1395hh and 1395ii), unless otherwise noted).

**§ 498.3 [Amended]**

34. In § 498.3, the following changes are made:

a. In paragraph (b)(10), "§ 409.10 or § 409.64" is changed to "§ 409.19 or § 410.64".

b. Paragraph (d)(2) is revised to read as follows:

(d) \* \* \*

(2) The finding that a prospective provider does not meet the conditions of participation set forth elsewhere in this chapter, if the prospective provider is, nevertheless, approved for participation in Medicare on the basis of special access certification, as provided in subpart B of part 488 of this chapter.

c. Paragraph (d)(3) is revised to read as follows:

(d) \* \* \*

(3) The refusal to enter into a provider agreement because the prospective provider is unable to give satisfactory assurance of compliance with the requirements of title XVIII of the Act.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance; Program No. 13.773, Medicare—Hospital Insurance; Program No. 13.774, Medicare—Supplementary Medical Insurance)

Editorial Note: This document was received by the Office of the Federal Register on February 20, 1991.

Dated: June 15, 1990.

Gail R. Wilensky,  
Administrator, Health Care Financing  
Administration.

Approved: July 9, 1990.

Louis W. Sullivan,  
Secretary.

[FR Doc. 91-4415 Filed 2-28-91; 8:45 am]

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# Federal Register

Friday  
March 1, 1991

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## Part III

### Environmental Protection Agency

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40 CFR Parts 86 and 600

**Fuel Economy Test Procedures;  
Alternative-Fueled Automobile CAFE  
Incentives and Fuel Economy Labeling  
Requirements; Notice of Proposed  
Rulemaking**



# ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86 and 600

[AMS-FRL-3911-9]

RIN 2060-AC78

## Fuel Economy Test Procedures; Alternative-Fueled Automobile CAFE Incentives and Fuel Economy Labeling Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to amend the fuel economy regulations (40 CFR part 600) to include alternative-fueled automobiles. The Alternative Motor Fuels Act (AMFA) of 1988 (Pub. L. 100-494, October 14, 1988) includes alternative-fueled automobiles (passenger automobiles and light trucks) in the Corporate Average Fuel Economy (CAFE) program on a favorable basis to encourage the manufacture of such vehicles. The act provides CAFE credits for automobiles designed to be fueled with methanol, ethanol, other alcohols, natural gas, or dual fuel automobiles designed to operate on one or more of these alternative fuels and gasoline or diesel fuel. Fuel economy labeling requirements for alternative-fueled automobiles are also specified in the AMFA. The purpose of this notice of proposed rulemaking [NPRM] is to propose rules to codify the requirements of the AMFA. In order to save time and printing costs, some technical amendments of 40 CFR part 86 have also been included in this NPRM.

**DATES:** Public Comment: Comments on the NPRM must be submitted on or before April 1, 1991.

**ADDRESSES:** Written comments should be submitted (in duplicate if possible) to the U.S. Environmental Protection Agency, The Air Docket: Docket No. A-89-24, room M-1500 (LE-131), Waterside Mall, 401 M Street SW., Washington, DC 20460. Materials relevant to this proposed rulemaking are contained in Docket No. A-89-24. The docket is located at the above address and may be inspected from 8 a.m. until noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** Kenneth L. Zerafa, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Rd., Ann Arbor, MI 48105, (313) 668-4331.

## SUPPLEMENTARY INFORMATION:

### I. Introduction

Congress enacted the Alternative Motor Fuels Act of 1988 (AMFA), Public Law 100-494 (codified at 15 U.S.C. 2001(i), 2002(e), 2006(a)(4), 2006(b)(3), and 2013, 42 U.S.C. 6374(a-d)) on October 14, 1988. Its purpose is to encourage (1) the development and widespread use of methanol, ethanol, and natural gas as transportation fuels by consumers; and (2) the production of methanol, ethanol, and natural gas-fueled motor vehicles. (S. Rep. No. 100-271 at 1-2 (1987); H. Conf. Rep. No. 100-929 at 15-16 (1988).)

The AMFA amended subchapter V, "Improving Automotive Fuel Efficiency," of the Motor Vehicle Information and Cost Savings Act (MVICSA), 15 U.S.C. 1901-2034. That subchapter, added by title III of the Energy Policy and Conservation Act of 1975, established a ten-year program designed to double the average fuel efficiency of new cars.

Specifically, subchapter V requires automakers to meet a series of fuel economy standards for passenger cars, beginning with the 1978 model year. It also requires automakers to meet CAFE standards set each year by the Secretary of Transportation for light trucks. However, it does not require that every new automobile meet the applicable standards, but only that each manufacturer's passenger car and light truck fleets achieve the standards on a sales-weighted basis. Thus, the standards are referred to as corporate average fuel economy ("CAFE") standards.

Subchapter V of the MVICSA also imposes penalties on manufacturers that fail to comply. It directs the Secretary of Transportation to fine a manufacturer \$5.00 for every tenth of a mile per gallon (mpg) by which it misses an applicable standard, multiplied by the number of automobiles in its fleet for that year. Under that formula, failure by a large manufacturer to meet a CAFE standard by even one tenth of a mpg can result in fines totalling millions of dollars.

Subchapter V assigns to EPA the task of measuring and calculating manufacturers' fleet-wide fuel economies for purposes of determining compliance with a CAFE standards.

Section 501(5) of the MVICSA defines "fuel" as including gasoline and diesel oil. It then authorizes the Secretary of Transportation, by rule, to include any other liquid or gaseous fuel in the definition if he determines it would be consistent with the need of the nation to conserve energy.

The AMFA amended subchapter V of the MVICSA by directing EPA to include

in the CAFE calculation the fuel economy of certain alternative-fueled automobiles ("automobiles" as defined in section 2001 of the MVICSA and as amended by the AMFA includes passenger automobiles and light trucks) on a favorable basis, beginning with model year 1993, to provide incentives to manufacture such automobiles. The AMFA directs EPA to include in the CAFE calculation automobiles fueled exclusively by alcohol (alcohol-fueled automobiles),<sup>1</sup> and automobiles fueled exclusively by natural gas (natural gas-fueled automobiles),<sup>2</sup> and automobiles that can operate on either gasoline or diesel fuel, as well as either alcohol (alcohol dual fuel automobiles)<sup>3</sup> or natural gas (natural gas dual fuel automobiles)<sup>4</sup> or a combination of gasoline or diesel fuel and alcohol or natural gas (section 2013(e)). The term alcohol is defined in 15 U.S.C. 2013(h)(1) as "a mixture containing 85 percent or more by volume methanol, ethanol, or other alcohols, in any combination."

The statute also requires that alcohol dual fuel automobiles and natural gas dual fuel automobiles are to provide equal or superior energy efficiency while operating on the alternative fuel as when operating on gasoline or diesel fuel (section 2013(h)(1)(C)(ii) and (D)(ii)). With respect to alcohol dual fuel automobiles, the AMFA further provides that such automobiles manufactured in model years 1993 through 1995 (or for a longer period if extended by the Administrator) are to achieve energy efficiency when they are operated on a mixture of 50 percent alcohol and 50 percent gasoline or diesel fuel equal to or superior to that achieved when they are operated exclusively on gasoline or diesel fuel (section 2013(h)(1)(C)(iii)). One further requirement established by the AMFA for alcohol dual fuel automobiles and natural gas dual fuel automobiles which are also passenger automobiles is that they comply with minimum driving range requirements established by the Secretary of Transportation (section 2013(h)(1)(C)(iv) and (D)(iii)). These ranges were established by the National Highway Traffic Safety Administration (NHTSA) in the Federal Register on April 26, 1990 (55 FR 17611). The minimum driving range for alcohol dual fuel vehicles is

<sup>1</sup> Referred to in the AMFA as "alcohol powered automobiles."

<sup>2</sup> Referred to in the AMFA as "natural gas powered automobiles."

<sup>3</sup> Referred to in the AMFA as "dual energy automobiles."

<sup>4</sup> Referred to in the AMFA as "natural gas dual energy automobiles."



200 miles and the range for natural gas dual fuel vehicles is 100 miles.

The CAFE calculation is to include automobiles manufactured after model year 1992 that operate exclusively on alcohol or natural gas, and dual fuel automobiles manufactured in model years 1993 through 2004. (The period during which dual fuel automobiles are to be included in the CAFE calculation may be extended through model year 2008 by the Secretary of Transportation.) (section 2013(f)).

The basis on which alternative-fueled automobiles are to be included in the CAFE calculation under the AMFA is favorable and is intended to encourage manufacturers to produce such automobiles. With respect to alcohol-fueled automobiles, the AMFA provides that the CAFE calculation is to be based on the gasoline or diesel content of the mixture, which is deemed to be 15 percent. For example, an alcohol-fueled automobile which has a measured fuel economy of 18 mpg while operating on alcohol would receive a rating of 120 mpg (18/0.15) for CAFE purposes. It must be noted that the 0.15 divisor is a fixed number (i.e., it is not proportional to the actual gasoline or diesel content of the blend). With respect to natural gas-fueled automobiles, the AMFA provides that 100 cubic feet of natural gas shall be considered to contain 0.823 gallon equivalent of natural gas and that the CAFE calculation is to be based on the assumption that a gallon equivalent of natural gas has a petroleum fuel content of 15 percent. For dual fuel automobiles, the fuel economy for CAFE purposes is to reflect the assumption that the automobiles are operated half of the time on gasoline or diesel fuel and half of the time on the alternative fuel and the two measured fuel economies are harmonically averaged (section 2013(a)-(d)).

The AMFA also limits the maximum increase in a manufacturer's average fuel economy attributable to dual fuel automobiles to 1.2 mpg for model years 1993 through 2004 and, if extended by the Secretary of Transportation, to 0.9 mpg for model years 2005 through 2008 for each compliance category of automobiles (i.e., domestic passenger, import passenger, domestic light truck, and import light truck). Furthermore, if the Secretary of Transportation reduces the average fuel economy standard applicable to passenger automobiles to less than 27.5 mpg for any model year, increases in the manufacturer's fuel economy attributable to dual fuel passenger automobiles above 0.7 mpg are to be reduced by the amount the standard was lowered, but may not be

reduced to less than 0.7 mpg (section 2013(g)).

The AMFA also amends the fuel economy labeling provisions of section 506 of the MVCSA to require that specific fuel economy information for dedicated alternative-fueled automobiles and dual fuel automobiles appear on the label and in the Gas Mileage Guide published by the Department of Energy (15 U.S.C. 2006(a)(4) and (b)(5)).

For alcohol-fueled automobiles or natural gas-fueled automobiles, the AMFA states that the fuel economy for labeling purposes shall be the fuel economy value calculated for CAFE purposes multiplied by the value, 0.15.

In the case of alcohol dual fuel automobiles or natural gas dual fuel automobiles, the AMFA states that each label must: (i) Indicate the fuel economy of such automobiles when operated on gasoline or diesel fuel; (ii) clearly identify such automobiles as alcohol dual fuel or natural gas dual fuel automobiles, as the case may be; (iii) clearly identify the fuels on which such automobiles may be operated; and (iv) contain a statement informing the consumer that the additional information is contained in the booklet published and distributed by the Department of Energy.

A more detailed discussion of the requirements of the AMFA can be found in a memo entitled CAFE Incentives and Fuel Economy Labeling Requirements of the Alternative Motor Fuels Act of 1988 to the docket (no. A-89-24) of this NPRM.

## II. Discussion of Proposal

As described in the introduction, the AMFA specifies the amount of CAFE credits obtainable by particular vehicle types; the proposed regulatory language implements these provisions. Test procedures and other issues not specified in the AMFA are addressed below.

### A. Options Considered to Include Methanol, Ethanol, and Natural Gas in the Fuel Economy Regulations

Section 503 of the MVCSA requires, to the extent practicable, that fuel economy tests be conducted in conjunction with emission tests conducted under section 206 of the Clean Air Act (42 U.S.C. 7525). Accordingly, the current certification test procedures of the Federal Motor Vehicle Control Program (FMVCP) for gasoline or diesel-fueled automobiles are also those used for fuel economy testing. The current fuel economy program regulations specify that only automobiles meeting Federal emission

standards can generate acceptable fuel economy data.

On April 11, 1989, the EPA published a final rulemaking in the Federal Register (54 FR 14426) which established emission standards and test procedures for methanol-fueled automobiles. However, this regulation did not include test, measurement, or calculation procedures for fuel economy of methanol-fueled automobiles as no fuel equivalency factor (the amount of an alternative fuel which is equivalent to a gallon of gasoline) for methanol was available.

The AMFA now provides the fuel equivalency factor for methanol for CAFE purposes and specifies the steps to include methanol-fueled automobiles in the CAFE program. It is thus a straightforward matter for EPA to propose specific fuel economy test, measurement, and calculation procedures for methanol-fueled automobiles consistent with the fuel economy program requirements placed on gasoline-fueled and diesel-fueled automobiles, since emission standards and test procedures have been promulgated and a fuel equivalency factor for CAFE purposes has been established.

Less straightforward is how to deal with automobiles fueled with natural gas and ethanol with regard to the new fuel economy provisions of the AMFA. The AMFA provides fuel equivalency factors for ethanol and natural gas for CAFE purposes. However, no emission standards or test procedures have been promulgated for ethanol-fueled or natural gas-fueled automobiles.

A threshold issue is whether fuel economy data vehicles must be subject to emission standards. As noted above, the current regulations require that fuel economy data vehicles be covered by a certificate of conformity with emission standards (§ 600.007-80(f)). Since a certificate may be obtained only by demonstrating compliance with emission standards, the regulations indirectly require that fuel economy data vehicles be subject to emission standards.

The requirement that fuel economy data vehicles be covered by a certificate was promulgated when the only vehicles included in the fuel economy calculation were gasoline- and diesel-fueled vehicles. These vehicles were and are subject to emission standards as well. One reason to require that fuel economy data vehicles also meet emission standards is to ensure that such vehicles be representative of vehicles found in use.



Obviously, this rationale for requiring fuel economy data vehicles to meet emission standards does not apply where vehicles are not subject to emission standards. On the other hand, an advantage of setting emission standards and test procedures for alternative-fueled vehicles which are included in the CAFE program is to remove the possibility that the absence of such standards could obstruct the development of such vehicles. Moreover, in the process of setting standards for other types of fuels, EPA would develop test procedures that would serve as fuel economy test procedures as well.

One option considered by EPA was to only include the fuel economy provisions for methanol-fueled vehicles in 40 CFR Part 600 since emission standards are in place for methanol-fueled vehicles. Inclusion of the provisions for automobiles fueled with ethanol and natural gas would be postponed until emission standards and test procedures for these automobiles are developed. However, delaying adopting fuel economy procedures for these alternative fuel automobiles might tend to undermine the AMFA's intent to encourage the use of alternative fuels on a fuel neutral basis. Also, the AMFA requires EPA to calculate CAFE subject to the requirements therein, beginning with model year 1993. Therefore, any delays to including the CAFE credit mechanism for alternative-fueled automobiles manufactured after model year 1992 could undermine AMFA requirements. Further, there seems no benefit in delaying adopting general fuel economy calculation procedures for automobiles fueled with ethanol or natural gas. Therefore, EPA is not proposing this option.

A second option considered was to develop emission standards and test procedures for natural gas-fueled automobiles and ethanol-fueled automobiles and include these emission standards and test procedures along with the fuel economy provisions for automobiles fueled with these fuels and the provisions for methanol-fueled automobiles in one package. However, due to the greater number of issues that would have to be resolved, this approach would delay the inclusion of alternative fuels in the CAFE program and the accompanying potential incentive for the development of automobiles fueled by methanol, ethanol, and natural gas. It is outside the scope of this rulemaking to establish emission standards and emission test and measurement procedures for natural gas and ethanol-fueled automobiles. For

these reasons, EPA is not proposing this option.

A third option is the one EPA is today proposing to implement. This option is to establish the fuel economy incentive mechanism (credit calculation procedures) for methanol, ethanol, and natural gas-fueled automobiles in the regulations. In addition, since emission standards and emission measurement procedures have already been developed for methanol-fueled automobiles, fuel economy measurement procedures are also proposed for methanol-fueled automobiles. However, before manufacturers will be able to receive CAFE credits for automobiles fueled with natural gas or ethanol, fuel economy measurement procedures or provisions need to be established covering these alternative fuels. In addition, to maintain a level playing field for the different types of fuels, emission standards for natural gas-fueled and ethanol-fueled vehicles should be set.

EPA has begun work on a separate rulemaking to develop emission standards and test procedures for automobiles fueled with natural gas. This separate rulemaking will address the natural gas-fueled automobile emission and fuel economy measurement procedures necessary to determine the fuel economy values to which the CAFE credit mechanism (proposed in this NPRM) is applied. EPA expects to complete this rulemaking before the start of the 1992 model year, in time for manufacturers to include any 1993 model year natural gas-fueled automobiles in the fuel economy program.

As for ethanol-fueled automobiles, EPA is not in a position to develop emission standards and test procedures for such automobiles at this time. The Agency is unaware of any plans by any manufacturer to develop ethanol-fueled automobiles for sale in the U.S. (Ethanol-fueled vehicles currently are used in Brazil and other countries, but those vehicles are not subject to emission controls similar to those required in the United States. The vehicles thus provide little insight into what emission control ethanol vehicles could achieve.) With no ethanol automobiles under development for this market, EPA has little or no basis for determining emission standards and test procedures for such automobiles at this time. When any manufacturer develops an ethanol-fueled automobile for sale in the United States, the Agency will conduct a rulemaking to establish test procedures and, if time allows, emission standards. The manufacturer may then

include such automobiles in its fuel economy calculation beginning with the 1993 model year or, if later, the model year in which the automobiles are introduced. Since EPA cannot be sure that it will have emission standards in place for all types of alternative fuel vehicles by the time they are included in CAFE calculation, EPA here proposes to revise the requirement that fuel economy data vehicles be covered by a certificate demonstrating compliance with emission standards so that it applies only where the vehicles are subject to emission standards.

The Energy Policy and Conservation Act (EPCA) requires that fuel economy measurement and calculation procedures be established by rule (15 U.S.C. 2003(d)(3)) not less than 12 months prior to the model year to which such procedures apply. Therefore, to ensure timely promulgation of such procedures and avoid delaying the receipt of CAFE credits, manufacturers should inform EPA as far in advance as possible of any plans to market alternative-fueled vehicles other than methanol-fueled vehicles. EPA solicits comment on how the Agency could expedite the promulgation of fuel economy test procedures for these other alternative-fueled vehicles if the need arises.

For example, under a direct final rulemaking, the Administrative Procedures Act (APA), which governs rulemakings under EPCA, allows the Agency to promulgate regulations without prior notice and comment if it has "good cause" to do so. The APA provides that good cause exists when notice and public comment are "impracticable, unnecessary, or contrary to the public interest" (5 U.S.C. 553(b)(3)). Courts have construed the "good cause" exception narrowly. EPA solicits comment on whether the Agency would have good cause to dispense with prior notice and comment if necessary to promulgate test procedures in time for manufacturers to obtain credits for vehicles designed to run on alternative fuels not already covered by established test procedures. The Agency is also interested in any other suggestions regarding how test procedures for such vehicles could be promulgated on a timely basis.

The Agency seeks comments on whether there are any alternative fuels, including other liquid or gaseous fuel, under consideration by the automotive industry for future use in addition to those addressed by the Alternative Motor Fuels Act (i.e., alcohol and natural gas) the inclusion of which in the CAFE program would be consistent with



the need of the nation to conserve energy, as discussed in section 501(5) of the MVCSA.

#### B. Fuel Economy Calculations for Methanol Automobiles

The general equation used by EPA to calculate fuel economy is:

$$\text{miles/gallon} = (\text{grams carbon/gallon fuel}) / (\text{grams carbon/mile})$$

The current method of calculating fuel economy for gasoline and diesel-fueled automobiles is based on this equation, but it can be applied to any carbon-based fuel. The equation is based on the carbon balance technique which relies on the premise that the quantity of carbon contained in the exhaust is equal to the quantity of carbon consumed by the engine as fuel.

The major carbon-containing compounds found in the exhaust of automobiles fueled with methanol are carbon dioxide ( $\text{CO}_2$ ), carbon monoxide ( $\text{CO}$ ), methanol ( $\text{CH}_3\text{OH}$ ), formaldehyde ( $\text{HCHO}$ ), and hydrocarbons ( $\text{HC}$ ). These are proposed to be included in the denominator of the basic equation to account for the carbon in the exhaust. For methanol/gasoline blends, EPA proposes the following equation for calculating fuel economy:

$$\text{mpg} = N/D$$

Where:

$$N = [(0.866)(2796)(G) + (0.375)(2994)(M)] = \text{grams carbon/gallon fuel}$$

$$D = [(CWF_{\text{HC}} \times \text{HC}) + (0.429 \times \text{CO}) + (0.273 \times \text{CO}_2) + (0.375 \times \text{CH}_3\text{OH}) + (0.400 \times \text{HCHO})] = \text{grams carbon in exhaust/mile}$$

Where:

0.866 = carbon weight fraction of gasoline

0.375 = carbon weight fraction of methanol

2796 = density of gasoline [grams/gallon]

2994 = density of methanol [grams/gallon]

G = gasoline volume fraction (percent/100)

M = methanol volume fraction (percent/100)

HC, CO,  $\text{CO}_2$ ,  $\text{CH}_3\text{OH}$ , and HCHO are the

weighted mass emissions [grams/mile]

as calculated in 40 CFR 86.144.

$CWF_{\text{HC}}$ , 0.429, 0.273, 0.375, and 0.400 = carbon

weight fractions of the respective

exhaust constituent compounds.

The term,  $CWF_{\text{HC}}$ , in the denominator is the carbon weight fraction of the hydrocarbon constituent in the exhaust. EPA considered two options for determining which value(s) should be used for the  $CWF_{\text{HC}}$  term:

#### Option 1

Since the proposed fuel economy equation is applicable to different gasoline/methanol blends, the carbon weight fraction of the exhaust hydrocarbon constituent will vary depending on the fuel blend (e.g., percentage of methane relative to total exhaust hydrocarbons will increase with

increasing methanol content of the fuel). EPA has obtained limited data on the hydrogen to carbon ratio (H/C) of exhaust hydrocarbons from vehicles operating on M85 and M100<sup>\*</sup>. The average H/C for total exhaust hydrocarbons of vehicles operating on M85 was 2.26 ( $CWF_{\text{HC}}=0.840$ ) and that for M100 was 3.23 ( $CWF_{\text{HC}}=0.787$ ) for the vehicles tested by EPA (FTP cycle at 75 °F). One option considered by EPA is to use these values for the  $CWF_{\text{HC}}$  term for the respective gasoline/methanol blend. Although the AMFA defines alcohol fuel as containing at least 85 percent (by volume) alcohol, EPA expects the most prevalent fuels to be M85 and M100. However, should fuel blends containing greater than 85 and less than 100 percent methanol be used for methanol-fueled automobiles, the carbon weight fraction could be determined by the linear interpolation of the carbon weight fractions used for the exhaust hydrocarbons from vehicles operating on M85 and M100.

With one exception, for fuel economy purposes, the proposed carbon balance equation for methanol-fueled automobiles does not apply to blends which contain less than 85 percent methanol (by volume). The AMFA requires that alcohol dual fuel automobiles that are capable of operating on a range of mixtures of gasoline and methanol must provide equal or superior energy efficiency while operating on a 50 percent (by volume) alcohol and 50 percent gasoline fuel mixture as while operating on a 100 percent gasoline fuel. Although no data were obtained by EPA for M50, EPA expects the carbon weight fraction of exhaust hydrocarbons from vehicles operating on M50 to be between the carbon weight fraction for gasoline (i.e., 0.866) and the carbon weight fraction for M85 (i.e., 0.840) exhaust hydrocarbons. For M50, under this option, EPA considered using the value of 0.853 which is the average of the gasoline and M85 carbon weight fractions.

Due to the added complexity in accounting for the different carbon weight fractions and their likely negligible impact on measured fuel economy, EPA does not favor Option 1, preferring instead Option 2 explained below.

#### Option 2

A second option considered by EPA assumes a fixed carbon weight fraction

of 0.866 ( $H/C=1.85$ ) for the exhaust hydrocarbon constituents regardless of fuel blend. This option eliminates the complexity of determining and using individual values for each fuel blend. Also, the contribution to the total grams carbon per mile of the exhaust hydrocarbon term in the fuel economy equation is expected to be very small relative to the carbon dioxide term and therefore expected to have a very limited effect on fuel economy. For this reason small differences in the exhaust hydrocarbon carbon weight fraction due to combustion of different fuel blends will have a negligible effect on the fuel economy determination and a single constant carbon weight fraction could be used for any methanol/gasoline blend. In addition, this option is consistent with the 40 CFR part 86 emission measurement procedures which assume a H/C of 1.85 for the exhaust hydrocarbon constituent of gasoline/methanol blends. For the reasons stated above, EPA is proposing the fixed carbon weight fraction value of 0.866 for the exhaust hydrocarbon constituent of vehicles operating on gasoline/methanol blends.

This equation is proposed not to apply to automobiles fueled with 100 percent gasoline (i.e., methanol volume percentage equal to zero). The equation established in 40 CFR 600.113(e) will continue to be used to determine the fuel economy of automobiles fueled with gasoline.

The proposed equation is based on fixed fuel property values (carbon weight fraction and density) for methanol and gasoline. EPA will evaluate the need to use measured fuel properties (i.e., measured for each fuel economy test or periodically for each batch of fuel) of methanol fuels and methanol/gasoline blends as experience is gained with the use of these fuels. Blends containing a high percentage of methanol may or may not display fuel property variations significant enough to warrant the use of measured fuel properties in the fuel economy calculations. Therefore, at least for the near term, EPA is not proposing the use of measured fuel properties for calculating the fuel economy of automobiles fueled with methanol or methanol/gasoline blends. EPA is soliciting comments on the proposed method for calculating fuel economy for methanol-fueled automobiles. In particular, EPA requests comment on the appropriateness of using fixed fuel properties in place of measured fuel properties. EPA also is soliciting comments on the appropriate carbon weight fractions and densities of

\* The data is available for review in EPA Docket No. A-89-24 under the title, "H/C Ratio From M-85 and M-100 Vehicles" and originated from the Atmospheric Research & Exposure Laboratory of EPA.



methanol fuel and gasoline used for blending to use in calculating fuel economy of automobiles operating on these fuels.

### C. Alternative Procedure Option

The regulations for emission testing of methanol-fueled automobiles (54 FR 14427) established emission standards for organics intended to control carbon-based organics from methanol-fueled automobile emissions to a level equivalent to that allowed from petroleum-fueled automobiles under their respective hydrocarbon standards. The primary organic emissions from methanol-fueled automobiles are methanol, formaldehyde, and hydrocarbons. These are required to be measured separately to determine compliance with the carbon-based organic standard and are also proposed to be required for fuel economy calculations. However, to reduce testing costs and complexity and provide manufacturers with more flexibility during development of methanol-fueled automobiles, EPA is providing an interim alternative method (54 FR 14430) for determining organic emissions and fuel economy for methanol-fueled automobiles. The method, which is applicable through 1994, employs the use of a flame ionization detector (FID) calibrated on methanol to perform a single measurement of hydrocarbons and oxygenated organics. This alternative method would accurately measure methanol but would overmeasure hydrocarbons. Formaldehyde, which generally comprises only about five percent of the total organic emissions from methanol-fueled vehicles, would remain virtually undetected. However, the anticipated net effect is that carbon in the exhaust would be reported high because the method's overmeasure of hydrocarbon is expected to be greater than the undermeasure of formaldehyde. As a result, fuel economy would be slightly lower with this optional procedure since the carbon measured by the FID would be assumed to have a hydrocarbon origin for fuel economy calculation purposes. If this procedure is adopted for fuel economy purposes, it would be applicable during model years 1993 and 1994. EPA is requesting comments on the desirability of this optional method for calculating fuel economy.

### D. Energy Efficiency of Dual Fuel Automobiles

The AMFA requires that alcohol dual fuel automobiles and natural gas dual fuel automobiles provide equal or superior energy efficiency while operating on natural gas or alcohol, as

the case may be, as while operating on gasoline or diesel fuel. In addition, since a range of mixtures of alcohol and gasoline fuel can be used to operate alcohol dual fuel automobiles (also referred to as flexible fuel automobiles), these automobiles must provide equal or superior energy efficiency on a 50 percent (by volume) alcohol and 50 percent gasoline fuel mixture, as on a 100 percent gasoline fuel. The AMFA specifies that these energy efficiency determinations are to be made during fuel economy testing for the Federal Government.

EPA is proposing the method described below for the determination of equal or superior energy efficiency. For an automobile to be eligible for the CAFE credit for dual fuel automobiles, the following relation must hold true for both the city and highway fuel economy values for each test of each dual fuel automobile tested for fuel economy purposes:

$$E_{alt}/E_{pet} > 1$$

where:

$E_{alt}$  =  $[FE_{alt}/(NHV_{alt} \times D_{alt})] \times 10^6$  = energy efficiency while operating on alternative fuel [miles/million BTU].

$E_{pet}$  =  $[FE_{pet}/(NHV_{pet} \times D_{pet})] \times 10^6$  = energy efficiency while operating on gasoline or diesel (petroleum) fuel [miles/million BTU].

$FE_{alt}$  is the fuel economy [miles/gallon for liquid fuels or miles/100 cubic feet for gaseous fuels] while operating on the alternative fuel;

$FE_{pet}$  is the fuel economy [miles/gallon] while operating on gasoline or diesel (petroleum) fuel;

$NHV_{alt}$  is the net (lower) heating value [BTU/lb] of the alternative fuel;

$NHV_{pet}$  is the net (lower) heating value [BTU/lb] of gasoline or diesel fuel;

$D_{alt}$  is the density [lb/gallon for liquid fuels or lb/100 cubic feet for gaseous fuels] of the alternative fuel;

$D_{pet}$  is the density [lb/gallon] of gasoline or diesel fuel.

The AMFA also requires that 1993 through 1995 model year alcohol dual fuel automobiles provide equal or superior energy efficiency while operating on a blend of 50 percent alcohol and 50 percent gasoline (by volume), as while operating on gasoline or diesel fuel. The statute provides EPA with the authority to extend this requirement until model year 2004, or 2008, at the latest. To implement this requirement, EPA is proposing that manufacturers perform city and highway fuel economy tests using a 50 percent alcohol, 50 percent gasoline (by volume) mixture for each test automobile used for fuel economy purposes. EPA is proposing the relation described above must then also hold true for each test of each automobile when the fuel economy

and fuel property values for this mixture are substituted into the 'alt' subscripted terms of the energy efficiency equations. This 50 percent alcohol, 50 percent gasoline testing requirement would be applicable for model years 1993 through 1995. If the Administrator of the Environmental Protection Agency determines that an extension of the requirement is warranted, an extension will be pursued in a separate rulemaking.

Under this proposal, manufacturers would be required to determine the net heating values and densities of the alternative fuel, petroleum fuel, and a 50 percent alcohol, 50 percent gasoline mixture to be used in the above relation. Manufacturers would also be responsible for showing that the test fuels used are representative of commercially available fuels. Upon reviewing the net heating values and densities submitted by the manufacturer, the Administrator shall determine the net heating values and densities to be used. The net heating values and densities of gasoline are to be determined in accordance with 40 CFR 600.113 paragraph (c).

Use of the net (lower) heating value is proposed rather than the higher heating value since the water formed by combustion is in the vapor state. EPA is soliciting comment on the appropriateness of the use of the net heating value. EPA also requests comment on the proposed procedure to meet the AMFA requirements for dual fuel automobile energy efficiency.

### E. Fuel Economy Label Format Requirements—Alcohol-Fueled and Natural Gas-Fueled Automobiles

Currently the fuel economy label format is specified for gasoline-fueled and diesel-fueled automobiles. To fulfill the labeling requirements of section 8 of the AMFA (15 U.S.C. 2006(a)), EPA is proposing to use this format for fuel economy labeling of alcohol-fueled or natural gas-fueled automobiles with minor modification. To help avoid consumer confusion while comparison shopping, the label should clearly indicate the type of fuel the automobile operates on. EPA is proposing that a fuel title (example: "Natural Gas") be positioned above the fuel pump logo on the fuel economy label. EPA is also proposing that a statement: "This vehicle operates on (insert appropriate fuel(s)) only." be included on the label of 1993 and later model year vehicles. The proposed location of this statement is that it appear on the bottom border of the label.



The AMFA requires that, in the case of alcohol-fueled and natural gas-fueled automobiles, the fuel economy for labeling purposes shall be the product of the fuel economy value calculated for CAFE purposes and the value, 0.15. Therefore, the city and highway fuel economy values to appear on the fuel economy label for alcohol-fueled automobiles are in terms of miles traveled per gallon of alcohol fuel consumed. For natural gas-fueled automobiles, the fuel economy label values determined in this way would be in terms of miles traveled per equivalent gallon of gasoline consumed, where 100 ft<sup>3</sup> of natural gas is designated as 0.823 gallons equivalent of natural gas. However, consumers considering the purchase of natural gas-fueled automobiles are also interested in driving range and cost to operate the automobile. Therefore, also expressing natural gas-fueled automobile fuel economy in miles traveled per actual volume of fuel consumed may be desirable. For this reason, EPA is proposing that the fuel economy labels for natural gas-fueled vehicles include the statement, "All fuel economy values on this label pertain to gasoline equivalent fuel economy. To convert these values into units of miles per 100 cubic feet of natural gas, multiply by 0.823."

For labeling purposes, the 0.9 and 0.78 multiplicative factors for adjusting the city and highway fuel economy values to better represent in-use fuel economy are proposed to apply to alcohol-fueled automobiles, natural gas-fueled automobiles, and dual fuel automobiles. Since these factors were developed to account for differences in travel environment, owner travel and driving habits, and vehicle maintenance, they are presumed to be reasonable for any fuel type.

#### F. Fuel Economy Label Format Requirements—Alcohol Dual Fuel and Natural Gas Dual Fuel Automobiles

To fulfill the labeling requirements of section 8 of the AMFA for alcohol dual fuel vehicles and natural gas dual fuel automobiles, EPA is proposing the following modifications and additions to the existing label requirements. The label must clearly identify the automobile as a dual fuel vehicle and list the fuels on which it can be operated. EPA is proposing that the title "Dual Fuel" be positioned above the fuel pump logo on the fuel economy label. EPA is also proposing that the statement, "This dual fuel vehicle operates on (gasoline or diesel) or (list alcohols or natural gas)" appear on the bottom border of the label. Also

proposed to appear on the label is, "All fuel economy values on this label pertain to (gasoline or diesel) fuel usage. (List alcohols or natural gas) fuel usage will yield different values. See the Gas Mileage Guide for information on (list alcohols or natural gas) fuel(s) usage." The proposed location for these statements is illustrated in the sample label of Appendix VIII of the proposed regulations.

#### G. Gas Guzzler Tax

Section 201 of the Energy Tax Act of 1978, 26 U.S.C. 4064 *et. seq.*, authorizes the Secretary of the Treasury (after consultation with the Secretary of Transportation) to include in the gas guzzler tax program automobiles fueled with any product of petroleum or natural gas, if such inclusion is consistent with the need of the nation to conserve energy. Consequently, the alternative fuels covered by the AMFA could conceivably be included in the gas guzzler tax program even though the program is presently limited to vehicles powered by gasoline or diesel fuel. The Energy Tax Act of 1978 gives EPA the responsibility for determining the amount of an alternative fuel that is equivalent to a gallon of gasoline, which is the fuel equivalency factor. The resulting gasoline-equivalent fuel economy of automobiles operating exclusively on alternative energy sources would then be used for purposes of the gas guzzler tax program.

As yet, however, the Department of the Treasury has not decided whether to include methanol, ethanol, or natural gas in the gas guzzler tax program. It would therefore be premature for EPA to establish a fuel equivalency factor for methanol, ethanol, or natural gas for purposes of the gas guzzler tax program. If and when methanol, ethanol, or natural gas are included in the gas guzzler tax program, EPA will initiate action to establish fuel equivalency factors for gas guzzler tax program purposes for those fuels.

The Department of Treasury has not decided how dual fuel automobiles should be treated for purposes of the gas guzzler tax program. Comments are requested regarding whether alternative-fueled automobiles or dual fuel automobiles should be included in the gas guzzler tax program.

#### III. Technical Amendments

To save the time and printing costs involved in publishing them under a separate notice, the following technical amendments to the test procedures for methanol vehicles are also included in this NPRM:

A. A formaldehyde concentration term is being added to the dilution factor equation located in 40 CFR 86.144-90(c)(7)(ii). Although the magnitude of the formaldehyde concentration is very low, it is possible that an assumption of zero concentration could lead to a slight change in calculated fuel economy. There is no reason why the formaldehyde concentration term should be left out of the equation. With this amendment, all measured carbon-containing compounds will be included in the dilution factor equation.

B. The symbol "x" is struck from the dilution factor equation of 40 CFR 86.144-90(c)(7)(ii) the first time it appears in the equation. As currently written, the symbol "x" has two meanings. The first time "x" appears in the equation it is used to represent multiplication. All other occurrences of "x" in the equation represent the measured fuel composition parameter: C<sub>x</sub>H<sub>y</sub>O<sub>z</sub>. By dropping the first occurrence of "x", only the latter meaning is retained. The multiplication function can be assumed by virtue of a number adjacent to a variable enclosed in parenthesis.

#### IV. Reporting and Recordkeeping Requirements

This proposed regulation essentially requires no new reporting or recordkeeping requirements for manufacturers currently included under the provisions of 40 CFR part 86 or 40 CFR part 600. This proposed regulation requires slight changes in fuel economy label wording for alternative-fueled automobiles.

#### V. Administrative Designation and Economic Impact

Under Executive Order 12291, EPA must judge whether a rule it intends to propose or to issue is a major rule and prepare a Regulatory Impact Analysis (RIA) for all major rules. EPA has determined that this proposed rule is not a "major rule" since it meets none of the conditions for a major regulation. This proposed rule is classified as "minor" since it may result in cost benefits to the automobile industry through CAFE credits and should result in no increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

#### VI. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires Federal agencies to identify potentially adverse impacts of proposed Federal regulations upon small entities. In instances where significant impacts



are possible on a substantial number of these entities, agencies are required to perform a preliminary Regulatory Flexibility Analysis (RFA). EPA has determined that proposed fuel economy regulation revisions herein will not have a significant impact on a substantial number of small entities.

#### List of Subjects

##### 40 CFR Part 86

Administrative practice and procedures, Air pollution control, Gasoline, Motor vehicles, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

##### 40 CFR Part 600

Electric power, Energy conservation, Gasoline, Labeling, Administrative practice and procedure, Fuel economy.

Authority: 15 U.S.C. 2001, 2002, 2003, 2006, 2013; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7601(a).

Dated: February 14, 1991.

William K. Reilly,  
Administrator.

TABLE OF CHANGES MADE TO VARIOUS SUBPARTS

Section	Change	Reason
1. Part 86, Authority.....		None
2. § 86.144-90, (c)(7)(ii).....	Addition of formaldehyde concentration term to DF equation and clarification of "x" term.	Technical amendments.
3. Part 600, Authority.....	Addition of citations.....	Incorporate all authority citations.
4. Table of Contents.....	Addition of 1993 MY sections.....	Incorporation of alcohol-fueled, natural gas-fueled, and alcohol dual fuel, and natural gas dual fuel vehicles into the regulations.
5. § 600.001-93.....	Addition of section 600.001-93.....	Do.
6. § 600.002-93.....	Addition of section 600.002-93.....	Do.
7. § 600.007-80, (f).....	Add words "and for which emission standards apply".....	Add language to clarify requirements for vehicle acceptability.
8. § 600.101-93.....	Addition of section 600.101-93.....	Do.
9. § 600.107-93.....	Addition of section 600.107-93.....	Do.
10. § 600.111-93.....	Addition of section 600.111-93.....	Do.
11. § 600.113-93.....	Addition of section 600.113-93.....	Add fuel economy equation for methanol-fueled and methanol dual fuel vehicles.
12. § 600.201-93.....	Addition of section 600.201-93.....	Incorporation of alcohol-fueled, natural gas-fueled, alcohol dual fuel, and natural gas dual fuel vehicles into the regulations.
13. § 600.206-93.....	Addition of section 600.206-93.....	Do.
14. § 600.207-93.....	Addition of section 600.207-93.....	Do.
15. § 600.209-93.....	Addition of section 600.209-93.....	Do.
16. § 600.301-93.....	Addition of section 600.301-93.....	Do.
17. § 600.307-93.....	Addition of section 600.307-93.....	Do.
18. § 600.501-93.....	Addition of section 600.501-93.....	Do.
19. § 600.510-93.....	Addition of section 600.510-93.....	Do.
20. Appendix VIII.....	Addition of sample labels.....	Do.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 86 and part 600 as follows:

#### PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 206, 207, 208, 215, 301(a), of the Clean Air Act as Amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a).

2. Section 86.144-90 is amended by revising paragraph (c)(7)(ii) to read as follows:

§ 86.144-90 Calculations; exhaust emissions.

\* \* \* \* \*

(c) \* \* \*

(7) \* \* \*

(ii)  $DF = 100(x/(x + y/2 + 3.78(x + y/4 - z/2)))/(CO_2 + (HC + CO_2 + C_{CH_3OH} + C_{CH_3OCH_3})10^{-9})$

For methanol-fueled vehicles where fuel composition is  $C_2H_5O_x$  as measured for the fuel used.

\* \* \* \* \*

#### PART 600—FUEL ECONOMY REGULATIONS FOR 1977 AND LATER MODEL YEAR AUTOMOBILES—GENERAL PROVISIONS

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 600 as follows:

3. The authority citation for part 600 is revised to read as follows:

Authority: Title III of the Energy Policy and Conservation Act of 1975, Pub. L. 94-163, 89 Stat. 871; title IV of the National Energy Conservation Policy Act of 1978, Pub. L. 95-619, 92 Stat. 3206; Alternative Motor Fuels Act of 1988, Pub. L. 100-494, 102 Stat. 2452.

4-5. A new § 600.001-93 is added to subpart A as follows:

##### § 600.001-93 General applicability.

(a) The provisions of this subpart are applicable to 1993 and later model year gasoline-fueled, diesel-fueled, alcohol-fueled, natural gas-fueled, alcohol dual

fuel, and natural gas dual fuel automobiles.

(b)(1) Manufacturers that produce only electric vehicles are exempt from the requirement of this subpart, except with regard to the requirements in those sections pertaining specifically to electric vehicles.

(2) Manufacturers with worldwide production (excluding electric vehicle production) of less than 10,000 gasoline-fueled and/or diesel powered passenger automobiles and light trucks may optionally comply with the electric vehicle requirements in this subpart.

6. A new § 600.002-93 is added to subpart A as follows:

##### § 600.002-93 Definitions.

(a) As used in this subpart, all terms are defined herein shall have the meaning given them in the Act.

(1) Act means part I of title V of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.).

(2) Administrator means the Administrator of the Environmental



Protection Agency or his authorized representative.

(3) *Secretary* means the Secretary of Transportation or his authorized representative.

(4) *Automobile* means:

(i) Any four-wheel vehicle propelled by a combustion engine using onboard fuel, or by an electric motor drawing current from rechargeable storage batteries or other portable energy storage devices (rechargeable using energy from a source off the vehicle such as residential electric service),

(ii) Which is manufactured primarily for use on public streets, roads, or highways (except any vehicle operated on a rail or rails)

(iii) Which is rated at not more than 8,500 pounds gross vehicle weight, which has a curb weight of not more than 6,000 pounds, and which has a basic vehicle frontal area of not more than 45 square feet, or

(iv) Is a type of vehicle which the Secretary determines is substantially used for the same purposes.

(5) "Passenger Automobile" means any automobile which the Secretary determines is manufactured primarily for use in the transportation of no more than 10 individuals.

(6) *Model Year* means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If a manufacturer has no annual production period, the term "model year" means the calendar year.

(7) *Federal Emission Test Procedure* refers to the dynamometer driving schedule, dynamometer procedure, and sampling and analytical procedures described in part 86 for the respective model year, which are used to derive city fuel economy data.

(8) *Federal Highway Fuel Economy Test Procedure* refers to the dynamometer driving schedule, dynamometer procedure, and sampling and analytical procedures described in subpart B of this part and which are used to derive highway fuel economy data.

(9) *Fuel* means (i) gasoline and diesel fuel for gasoline- or diesel-powered automobiles or (ii) electrical energy for electrically powered automobiles or (iii) alcohol for alcohol-powered automobiles or (iv) natural gas for natural gas-powered automobiles.

(10) *Fuel Economy* means (i) the average number of miles traveled by an automobile or group of automobiles per volume of fuel consumed as computed in § 600.113 or § 600.207 or (ii) the equivalent petroleum-based fuel economy for an electrically powered

automobile as determined by the Secretary of Energy.

(11) *City Fuel Economy* means the fuel economy determined by operating a vehicle (or vehicles) over the driving schedule in the Federal emission test procedure.

(12) *Highway Fuel Economy* means the fuel economy determined by operating a vehicle (or vehicles) over the driving schedule in the Federal highway fuel economy test procedure.

(13)(i) *Combined Fuel Economy* means the fuel economy value determined for a vehicle (or vehicles) by harmonically averaging the city and highway fuel economy values, weighted 0.55 and 0.45 respectively.

(ii) For electric vehicles, the term means the equivalent petroleum-based fuel economy value as determined by the calculation procedure promulgated by the Secretary of Energy.

(14) *Average Fuel Economy* means the unique fuel economy value as computed under § 600.510 for a specific class of automobiles produced by a manufacturer that is subject to average fuel economy standards.

(15) *Certification Vehicle* means a vehicle which is selected under § 86.084-24(b)(1) and used to determine compliance under § 86.084-30 for issuance of an original certificate of conformity.

(16) *Fuel Economy Data Vehicle* means a vehicle used for the purpose of determining fuel economy which is not a certification vehicle.

(17) *Label* means a sticker that contains fuel economy information and is affixed to new automobiles in accordance with subpart D of this part.

(18) *Dealer* means a person who resides or is located in the United States or any territory of the United States and who is engaged in the sale or distribution of new automobiles to the ultimate purchaser.

(19) *Model Type* means a unique combination of car line, basic engine, and transmission class.

(20) *Car Line* means a name denoting a group of vehicles within a make or car division which has a degree of commonality in construction (e.g., body, chassis). Car line does not consider any level of decor or opulence and is not generally distinguished by characteristics as roof line, number of doors, seats, or windows, except for station wagons or light-duty trucks. Station wagons and light-duty trucks are considered to be different car lines than passenger cars.

(21) *Basic Engine* means a unique combination of manufacturer, engine displacement, number of cylinders, fuel system (as distinguished by number of

carburetor barrels or use of fuel injection), catalyst usage, and other engine and emission control system characteristics specified by the Administrator. For electric vehicles, basic engine means a unique combination of manufacturer and electric traction motor, motor controller, battery configuration, electrical charging system, energy storage device, and other components as specified by the Administrator.

(22) *Transmission Class* means a group of transmissions having the following common features: Basic transmission type (manual, automatic, or semi-automatic); number of forward gears used in fuel economy testing (e.g., manual four-speed, three-speed automatic, two-speed semi-automatic); drive system (e.g., front wheel drive, rear wheel drive; four-wheel-drive); type of overdrive, if applicable (e.g., final gear ratio less than 1.00, separate overdrive unit); torque converter type, if applicable (e.g., non-lockup, lockup, variable ratio); and other transmission characteristics that may be determined to be significant by the Administrator.

(23) *Base Level* means a unique combination of basic engine inertia weight class and transmission class.

(24) *Vehicle Configuration* means a unique combination of basic engine, engine code, inertia weight class, transmission configuration, and axle ratio within a base level.

(25) *Engine Code* means a unique combination, within an engine-system combination (as defined in part 86 of this chapter), of displacement, carburetor (or fuel injection) calibration, distributor calibration, choke calibration, auxiliary emission control devices, and other engine and emission control system components specified by the Administrator. For electric vehicles, engine code means a unique combination of manufacturer, electric traction motor, motor configuration, motor controller, and energy storage device.

(26) *Inertia Weight Class* means the class, which is a group of test weights, into which a vehicle is grouped based on its loaded vehicle weight in accordance with the provisions of part 86.

(27) *Transmission Configuration* means the Administrator may further subdivide within a transmission class if the Administrator determines that sufficient fuel economy differences exist. Features such as gear ratios, torque converter multiplication ratio, stall speed, shift calibration, or shift speed may be used to further distinguish characteristics within a transmission class.



(28) *Axle Ratio* means the number of times the input shaft to the differential (or equivalent) turns for each turn of the drive wheels.

(29) *Auxiliary Emission Control Device (AECD)* means an element of design as defined in part 86.

(30) *Rounded* means a number shortened to the specific number of decimal places in accordance with the "Round Off Method" specified in ASTM E 29-67.

(31) *Calibration* means the set of specifications, including tolerances, unique to a particular design, version of application of a component, or component assembly capable of functionally describing its operation over its working range.

(32) *Production Volume* means, for a domestic manufacturer, the number of vehicle units domestically produced in a particular model year but not exported, and for a foreign manufacturer, means the number of vehicle units of a particular model imported into the United States.

(33) *Body Style* means a level of commonality in vehicle construction as defined by number of doors and roof treatment (e.g., sedan, convertible, fastback, hatchback) and number of seats (i.e., front, second, or third seat) requiring seat belts pursuant to National Highway Traffic Safety Administration safety regulations. Station wagons and light trucks are identified as car lines.

(34) *Hatchback* means a passenger automobile where the conventional luggage compartment, i.e., trunk, is replaced by a cargo area which is open to the passenger compartment and accessed vertically by a rear door which encompasses the rear window.

(35) *Pickup Truck* means a nonpassenger automobile which has a passenger compartment and an open cargo bed.

(36) *Station Wagon* means a passenger automobile with an extended roof line to increase cargo or passenger capacity, cargo compartment open to the passenger compartment, a tailgate, and one or more rear seats readily removed or folded to facilitate cargo carrying.

(37) *Gross Vehicle Weight Rating* means the manufacturer's gross weight rating for the individual vehicle.

(38) *Ultimate Consumer* means the first person who purchases an automobile for purposes other than resale or leases an automobile.

(39) *Van* means any light truck having an integral enclosure fully enclosing the driver compartment and load carrying device, and having no body sections protruding more than 30 inches ahead of the leading edge of the windshield.

(40) *Base Vehicle* means the lowest priced version of each body style that makes up a car line.

(41) *Nonpassenger Automobile* means an automobile that is not a passenger automobile, as defined by the Secretary of Transportation at 49 CFR 523.5.

(42) *Four-Wheel-Drive General Utility Vehicle* means a four-wheel-drive, general purpose automobile capable of off-highway operation that has a wheelbase not more than 110 inches and that has a body shape similar to a 1977 Jeep CJ-5 or CJ-7, or the 1977 Toyota Land Cruiser, as defined by the Secretary of Transportation at 49 CFR 533.4.

(43) *Test Weight* means the weight within an inertia weight class which is used in the dynamometer testing of a vehicle, and which is based on its loaded vehicle weight in accordance with the provisions of part 86.

(44) *Secretary of Energy* means the Secretary of Energy or his authorized representative.

(45) *Electric Traction Motor* means an electrically powered motor which provides tractive energy to the wheels of a vehicle.

(46) *Energy Storage Device* means a rechargeable means of storing tractive energy on board a vehicle such as storage batteries or a flywheel.

(47) *Motor Controller* means an electronic or electro-mechanical device to convert energy stored in an energy storage device into a form suitable to power the traction motor.

(48) *Electrical Charging System* means a device to convert 60Hz alternating electric current, as commonly available in residential electric service in the United States, to a proper form for recharging the energy storage device.

(49) *Battery Configuration* means the electrochemical type, voltage, capacity (in Watt-hours at the c/3 rate), and physical characteristics of the battery used as the tractive energy device.

(50) *Drive System* is determined by the number and location of drive axles (e.g., front wheel drive, rear wheel drive, four-wheel-drive) and any other feature of the drive system if the Administrator determines that such other features may result in a fuel economy difference.

(51) *Subconfiguration* means a unique combination within a vehicle configuration of equivalent test weight, road-load horsepower, and any other operational characteristics or parameters which the Administrator determines may significantly affect fuel economy within a vehicle configuration.

(52) *Alcohol* means a mixture containing 85 percent or more by volume

methanol, ethanol, or other alcohols, in any combination.

(53) *Alcohol-Fueled Automobile* means an automobile designed to operate exclusively on alcohol.

(54) *Alcohol Dual Fuel Automobile* means an automobile: (i) which is designed to operate on alcohol and on gasoline or diesel fuel; (ii) which provides equal or greater energy efficiency as calculated in accordance with § 600.510(g)(1) while operating on alcohol as it does while operating on gasoline or diesel fuel; (iii) which, for model years 1993 through 1995, provides equal or superior energy efficiency, as calculated in § 600.510(g)(2) while operating on a mixture containing 50 percent alcohol and 50 percent gasoline or diesel fuel as it does while operating on gasoline or diesel fuel; and (iv) which, in the case of passenger automobiles, meets or exceeds the minimum driving range established by the Department of Transportation.

(55) *Natural Gas-Fueled Automobile* means an automobile designed to operate exclusively on natural gas.

(56) *Natural Gas Dual Fuel Automobile* means an automobile: (i) which is designed to operate on natural gas and on gasoline or diesel fuel; (ii) which provides equal or greater energy efficiency as calculated in § 600.510(g)(1) while operating on natural gas as it does while operating on gasoline or diesel fuel; and (iii) which, in the case of passenger automobiles, meets or exceeds the minimum driving range established by the Department of Transportation.

7. Section 600.007-80 of subpart A is amended by revising paragraph (f) to read as follows:

**§ 600.007-80 Vehicle acceptability.**

(f) All vehicles used to generate fuel economy data and subject to emission standards must be covered by a certificate of conformity under part 86 before:

8. A new § 600.101-93 is added to subpart B, to read as follows:

**§ 600.101-93 General applicability.**

The provisions of this subpart are applicable to 1993 and later model year gasoline-fueled, diesel-fueled, alcohol-fueled, natural gas-fueled, alcohol dual fuel, and natural gas dual fuel automobiles.

9. A new § 600.107-93 is added to subpart B, to read as follows:



**§ 600.107-93 Fuel specifications.**

(a) The test fuel specifications for gasoline-fueled automobiles are given in paragraphs (a) (1) and (2) of § 86.113 of this chapter.

(b) The test fuel specifications for diesel-fueled automobiles are given in paragraphs (b) (1) through (3) of § 86.113 of this chapter.

(c) Alcohol fuel used for fuel economy testing and service accumulation of alcohol-fueled automobiles and alcohol dual fuel automobiles shall be representative of commercially available alcohol motor fuel and shall consist of at least 85 percent alcohol by volume except as provided for in § 600.111(i)(3).

(d) Natural gas used for fuel economy testing and service accumulation of natural gas-fueled automobiles and natural gas dual fuel automobiles shall be representative of commercially available natural gas for motor vehicle use.

(e) The specification range of the fuels to be used under paragraphs (c) and (d) of this section shall be reported in accordance with § 86.090-21(b)(3).

10. A new § 600.111-93 is added to subpart B, to read as follows:

**§ 600.111-93 Test procedures.**

(a) The test procedures to be followed for generation of the city fuel economy data are those prescribed in §§ 86.127 through 86.138 of this chapter, as applicable, except as provided for in paragraph (d) of this section. (The evaporative loss portion of the test procedure may be omitted unless specifically required by the Administrator.)

(b) The test procedures to be followed for generation of the highway fuel economy data are those specified in § 600.111-93 (b) through (j) inclusive.

(1) The Highway Fuel Economy Dynamometer Procedure consists of preconditioning highway driving sequence and a measured highway driving sequence.

(2) The highway fuel economy test is designated to simulate non-metropolitan driving with an average speed of 48.6 mph and a maximum speed of 60 mph. The cycle is 10.2 miles long with 0.2 stops per mile and consists of warmed-up vehicle operation on a chassis dynamometer through a specified driving cycle. A proportional part of the diluted exhaust emission is collected continuously for subsequent analysis of hydrocarbons, carbon monoxide, carbon dioxide using a constant volume (variable dilution) sampler. Diesel dilute exhaust is continuously analyzed for hydrocarbons using a heated sample line and analyzer. Methanol and

formaldehyde samples are collected and individually analyzed for methanol-fueled vehicles (measurement of methanol and formaldehyde may be omitted for 1993 through 1994 model year methanol-fueled vehicles provided a HFID calibrated on methanol is used for measuring HC plus methanol).

(3) Except in cases of component malfunction or failure, all emission control systems installed on or incorporated in a new motor vehicle must be functioning during all procedures in this subpart. The Administrator may authorize maintenance to correct component malfunction or failure.

(c) *Transmission.* The provisions of § 86.128 of this chapter apply for vehicle transmission operation during highway fuel economy testing under this subpart.

(d) *Road-load power and test weight determination.* Section 86.129 of this chapter applies for determination of road-load power and test weight for highway fuel economy testing. The test weight for the testing of a certification vehicle will be that test weight specified by the Administrator under the provisions of part 86. The test weight for a fuel economy data vehicle will be that test weight specified by the Administrator from the test weights covered by that vehicle configuration. The Administrator will base his selection of a test weight on the relative projected sales volumes of the various test weights within the vehicle configuration. In the case of methanol dual fuel vehicles, for city and highway fuel economy testing, the equivalent test weight for a fuel economy data vehicle is to be determined from the loaded vehicle weight when the vehicle is fueled with the appropriate test fuel.

(e) *Vehicle preconditioning.* The Highway Fuel Economy Dynamometer Procedure is designed to be performed immediately following the Federal Emission Test Procedure, §§ 86.127 through 86.138 of this chapter. When conditions allow, the tests should be scheduled in this sequence. In the event the tests cannot be scheduled within three hours of the Federal Emission Test Procedure (including one hour hot soak evaporative loss test, if applicable) the vehicle should be preconditioned as in paragraph (e) (1) or (2) of this section, as applicable.

(1) If the vehicle has experienced more than three hours of soak (68 °F-86 °F) since the completion of the Federal Emission Test Procedure or if the vehicle has experienced periods of storage outdoors or in environments where soak temperature is not controlled to 68 °F-86 °F, the vehicle must be preconditioned by operation on

a dynamometer through one cycle of the EPA Urban Dynamometer Driving Schedule, § 86.115 of this chapter.

(2) In unusual circumstances where additional preconditioning is desired by the manufacturer, the provisions of paragraph (a)(3) of § 86.132 of this chapter apply.

(f) *Highway fuel economy dynamometer procedure.* (1) The dynamometer procedure consists of two cycles of the Highway Fuel Economy Driving Schedule (§ 600.109(b)) separated by 15 seconds of idle. The first cycle of the Highway Fuel Economy Driving Schedule is driven to precondition the test vehicle and the second is driven for the fuel economy measurement.

(2) The provisions of paragraphs (b), (c), (e), (f), (g) and (h) of § 86.135 *Dynamometer procedure* of this chapter, apply for highway fuel economy testing.

(3) Only one exhaust sample and one background sample are collected and analyzed for hydrocarbons (except diesel hydrocarbons which are analyzed continuously), carbon monoxide, and carbon dioxide. Methanol and formaldehyde samples (exhaust and dilution air) are collected and analyzed for methanol-fueled vehicles (measurement of methanol and formaldehyde may be omitted for 1993 through 1994 model year methanol-fueled vehicles provided a HFID calibrated on methanol is used for measuring HC plus methanol).

(4) The fuel economy measurement cycle of the test includes two seconds of idle indexed at the beginning of the second cycle and two seconds of idle indexed at the end of the second cycle.

(g) *Engine starting and restarting.* (1) If the engine is not running at the initiation of the highway fuel economy test (preconditioning cycle), the start-up procedure must be according to the manufacturer's recommended procedures.

(2) False starts and stalls during the preconditioning cycle must be treated as in paragraphs (d) and (e) of § 86.136 of this chapter. If the vehicle stalls during the measurement cycle of the highway fuel economy test, the test is voided, corrective action may be taken according to § 86.079-25 of this chapter, and the vehicle may be rescheduled for test. The person taking the corrective action shall report the action so that the test records for the vehicle contain a record of the action.

(h) *Dynamometer test run.* The following steps must be taken for each test:

(1) Place the drive wheels of the vehicle on the dynamometer. The



vehicle may be driven onto the dynamometer.

(2) Open the vehicle engine compartment cover and position the cooling fan(s) required. Manufacturers may request the use of additional cooling fans for additional engine compartment or under-vehicle cooling and for controlling high tire or brake temperatures during dynamometer operation.

(3) Preparation of the CVS must be performed before the measurement highway driving cycle.

(4) Equipment preparation. The provisions of paragraphs (b) (3) through (6) inclusive of § 86.137 of this chapter apply for highway fuel economy test except that only one exhaust sample collection bag and one dilution air sample collection bag need be connected to the sample collection systems.

(5) Operate the vehicle over one Highway Fuel Economy Driving Schedule cycle according to the dynamometer driving schedule specified in paragraph (b) of § 600.109.

(6) When the vehicle reaches zero speed at the end of the preconditioning cycle, the driver has 17 seconds to prepare for the emission measurement cycle of the test. Reset and enable the roll revolution counter.

(7) Operate the vehicle over one Highway Fuel Economy Driving Schedule cycle according to the dynamometer driving schedule specified in paragraph (b) of § 600.109 while sampling the exhaust gas.

(8) Sampling must begin two seconds before beginning the first acceleration of the fuel economy measurement cycle and must end two seconds after the end of the deceleration to zero. At the end of the deceleration to zero speed, the roll or shaft revolutions must be recorded.

(i) For alcohol dual fuel automobiles, the procedures of § 600.111 (a) and (b) shall be performed for each of the required test fuels:

(1) Gasoline or diesel fuel as specified in § 600.107 (a) and (b).

(2) Alcohol fuel as specified in § 600.107(c), and

(3) A mixture containing 50% gasoline or diesel and 50% alcohol by volume, applicable during model years 1993 through 1995.

(j) For natural gas dual fuel automobiles, the procedures of § 600.111 (a) and (b) shall be performed for each of the required test fuels:

(1) Gasoline or diesel fuel as specified in § 600.107 (a) and (b), and

(2) Natural gas fuel as specified in § 600.107(d).

(11) A new § 600.113-93 is added to subpart B, to read as follows:

#### § 600.113-93 Fuel Economy calculations.

The Administrator will use the calculation procedure set forth in this paragraph for all official EPA testing of vehicles fueled with gasoline, diesel, or methanol fuel. The calculations of the weighted fuel economy values require input of the weighted grams/mile values for HC, CO, and CO<sub>2</sub>, and, where applicable CH<sub>3</sub>OH and HCHO for both the city fuel economy test and the highway fuel economy test.

Additionally, for tests for gasoline-fueled vehicles, the specific gravity, carbon weight fraction and net heating value of the test fuel must be determined. The city and highway fuel economy values shall be calculated as specified in this section. A sample appears in appendix II of this part.

(a) Calculate the weighted grams/mile values for the city fuel economy test for HC, CO, and CO<sub>2</sub>, and where applicable, CH<sub>3</sub>OH and HCHO as specified in § 86.144 of this chapter. For test of gasoline-fueled vehicles, measure and record the test fuel's properties as specified in paragraph (c) of this section.

(b)(1) Calculate the mass values for the highway fuel economy test for HC, CO, and CO<sub>2</sub>, and CH<sub>3</sub>OH and HCHO where applicable, as specified in paragraph (b) of § 86.144 of this chapter. For tests of gasoline-fueled vehicles, measure and record the test fuel's properties as specified in paragraph (c) of this section.

(2) Calculate the grams/mile values for the highway fuel economy test for HC, CO, and CO<sub>2</sub>, and CH<sub>3</sub>OH and HCHO where applicable, by dividing the mass values obtained in paragraph (b)(1) of this section, by the actual distance traveled, measured in miles, as specified in paragraph (h) of § 86.135 of this part.

(c) Gasoline test fuel properties shall be determined by analysis of a fuel sample taken from the fuel supply. A sample shall be taken after each addition of fresh fuel to the fuel supply. Additionally, the fuel shall be resampled once a month to account for any fuel property changes during storage. Less frequent resampling may be permitted if EPA concludes, on the basis of manufacturer-supplied data, that the properties of test fuel in the manufacturer's storage facility will remain stable for a period longer than one month. The fuel samples shall be analyzed to determine the following fuel properties:

(1) Specific gravity per ASTM D 1298.

(2) Carbon weight fraction per ASTM D 3343.

(3) Net heating value (Btu/lb) per ASTM D 3338.

(d) Calculate the city fuel economy and highway fuel economy from the grams/mile values for HC, CO, CO<sub>2</sub>, and CH<sub>3</sub>OH and HCHO where applicable, and, for test of gasoline-fueled vehicles, the test fuel's specific gravity, carbon weight fraction and net heating value. The emission values (obtained per paragraph (a) or (b) of this section, as applicable) used in each calculation of this section shall be rounded in accordance with § 86.084-26(a)(6)(iii). The CO<sub>2</sub> values (obtained per paragraph (a) or (b) of this section, as applicable) used in each calculation of this section shall be rounded to the nearest gram/mile. The specific gravity and the carbon weight fraction (obtained per paragraph (c) of this section) shall be recorded using three places to the right of the decimal point. The net heating value (obtained per paragraph (c) of this section) shall be recorded to the nearest whole Btu/lb. These numbers shall be rounded in accordance with the "Rounding Off Method" specified in ASTM E 29-67.

(e) For automobiles fueled with gasoline, the fuel economy in miles per gallon is to be calculated using the following equation:

$$\text{mpg} = (5174 \times 10^4 \times \text{CWF} \times \text{SG}) / [((\text{CWF} \times \text{HC}) + (0.429 \times \text{CO}) + (0.273 \times \text{CO}_2)) \times ((0.6 \times \text{SG} \times \text{NHV}) + 5471)]$$

Where:

HC = Grams/mile HC as obtained in paragraph (d) of this section.

CO = Grams/mile CO as obtained in paragraph (d) of this section.

CO<sub>2</sub> = Grams/mile CO<sub>2</sub> as obtained in paragraph (d) of this section.

CWF = Carbon weight fraction of test fuel as obtained in paragraph (d) of this section.

NHV = Net heating value by mass of test fuel as obtained in paragraph (d) of this section.

SG = Specific gravity of test fuel as obtained in paragraph (d) of this section.

Round the calculated result to the nearest 0.1 miles per gallon.

(f) For automobiles fueled with diesel, calculate the fuel economy in miles per gallon of diesel fuel by dividing 2778 by the sum of three terms:

(1) 0.866 multiplied by HC (in grams/mile as obtained in paragraph (d) of this section).

(2) 0.429 multiplied by CO (in grams/mile as obtained in paragraph (d) of this section), and

(3) 0.273 multiplied by CO<sub>2</sub> (in grams/mile as obtained in paragraph (d) of this section).

Round the quotient to the nearest 0.1 mile per gallon.

(g) For methanol-fueled automobiles and automobiles designed to operate on



mixtures of gasoline and methanol, the fuel economy in miles per gallon is to be calculated using the following equation:

$$\text{mpg} = \frac{[(0.866 \times 2796 \times G) + (0.375 \times 2994 \times M)]}{[(0.866 \times \text{HC}) + (0.429 \times \text{CO}) + (0.273 \times \text{CO}_2) + (0.375 \times \text{CH}_3\text{OH}) + (0.400 \times \text{HCHO})]}$$

Where:

HC = Grams/mile HC as obtained in paragraph (d) of this section.

CO = Grams/mile CO as obtained in paragraph (d) of this section.

CO<sub>2</sub> = Grams/mile CO<sub>2</sub> as obtained in paragraph (d) of this section.

CH<sub>3</sub>OH = Grams/mile CH<sub>3</sub>OH (methanol) as obtained in paragraph (d) of this section.

HCHO = Grams/mile HCHO (formaldehyde) as obtained in paragraph (d) of this section.

G = gasoline volume percentage divided by 100.

M = methanol volume percentage divided by 100.

(h) For methanol dual fuel vehicles tested on gasoline, the fuel economy is determined as specified in paragraph (e) of this section.

12. A new § 600.201-93 is added to subpart C, to read as follows:

**§ 600.201-93 General applicability.**

(a) The provisions of this subpart are applicable to 1993 and later model year gasoline-fueled, diesel-fueled, alcohol-fueled, natural gas-fueled, alcohol dual fuel, and natural gas dual fuel automobiles.

13. A new § 600.206-93 is added to subpart C, to read as follows:

**§ 600.206-93 Calculation and use of fuel economy values for gasoline-fueled, diesel-fueled, electric, alcohol-fueled, natural gas-fueled, alcohol dual fuel, and natural gas dual fuel vehicle configurations.**

(a) Fuel economy values determined for each vehicle, and as approved in § 600.008 (b) or (f), are used to determine city, highway, and combined fuel economy values for each vehicle configuration (as determined by the Administrator) for which data are available.

(1) If only one set of city and highway fuel economy values is accepted for a vehicle configuration, these values, rounded to the nearest tenth of a mile per gallon, comprise the city and highway fuel economy values for that configuration.

(2) If more than one city or highway fuel economy value is accepted for a vehicle configuration:

(i) All data shall be grouped according to the subconfiguration for which the data were generated using sales projections supplied in accordance with § 600.0207(a)(3).

(ii) Within each group of data, all values are harmonically averaged and rounded to the nearest 0.0001 of a mile

per gallon in order to determine city and highway fuel economy values for each subconfiguration at which the vehicle configuration was tested.

(iii) All city fuel economy values and all highway fuel economy values calculated in paragraph (a)(2)(ii) of this section are (separately for city and highway) averaged in proportion to the sales fraction (rounded to the nearest 0.0001) within the vehicle configuration (as provided to the Administrator by the manufacturer) of vehicles of each tested subconfiguration. The resultant values, rounded to the nearest 0.0001 mile per gallon, are the city and highway fuel economy values for the vehicle configuration.

(3) The combined fuel economy value for a vehicle configuration is calculated by harmonically averaging the city and highway fuel economy values, as determined in § 600.206(a)(1) or (2), weighted 0.55 and 0.45 respectively, and rounded to the nearest 0.0001 mile per gallon. A sample of this calculation appears in appendix II to this part.

(4) For alcohol dual fuel automobiles and natural gas dual fuel automobiles the procedures of paragraphs (a) (1) through (3) of this section shall be used to calculate two separate sets of city, highway, and combined fuel economy values for each configuration.

(i) Calculate the city, highway, and combined fuel economy values from the tests performed using gasoline or diesel test fuel.

(ii) Calculate the city, highway, and combined fuel economy values from the tests performed using alcohol or natural gas test fuel.

(b) If only one equivalent petroleum-based fuel economy value exists for an electric configuration, that value, rounded to the nearest tenth of a mile per gallon, will compose the petroleum-based fuel economy for that configuration.

(c) If more than one equivalent petroleum-based fuel economy value exists for an electric vehicle configuration, all values for that vehicle configuration are harmonically averaged and rounded to the nearest 0.0001 mile per gallon for that configuration.

14. A new § 600.207-93 is added to subpart C, to read as follows:

**§ 600.207-93 Calculation of fuel economy values for a model type.**

(a) Fuel economy values for a base level are calculated from vehicle configuration fuel economy values as determined in § 600.206(a) for low-altitude tests.

(1) If the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit

significant differences in fuel economy from those intended for sale in other states, he will calculate fuel economy values for each base level for vehicles intended for sale in California and for each base level for vehicles intended for sale in the rest of the states.

(2) In order to highlight the fuel efficiency of certain designs otherwise included within a model type, a manufacturer may wish to subdivide a model type into one or more additional model types. This is accomplished by separating subconfigurations from an existing base level and placing them into a new base level. The new base level is identical to the existing base level except that it shall be considered, for the purposes of this paragraph, as containing a new basic engine. The manufacturer will be permitted to designate such new basic engines and base level(s) if:

(i) Each additional model type resulting from division of another model type has a unique car line name and that name appears on the label and on the vehicle bearing that label.

(ii) The subconfigurations included in the new base levels are not included in any other base level which differs only by basic engine (i.e., they are not included in the calculation of the original base level fuel economy values), and

(iii) All subconfigurations within the new base level are represented by test data in accordance with § 600.010(c)(ii).

(3) The manufacturer shall supply total model year sales projections for each car line/vehicle subconfiguration combination.

(i) Sales projections must be supplied separately for each car line-vehicle subconfiguration intended for sale in California and each car line/vehicle subconfiguration intended for sale in the rest of the states if required by the Administrator under paragraph (a)(1) of this section.

(ii) Manufacturers shall update sales projections at the time any model type value is calculated for a label value.

(iii) The requirements of this paragraph may be satisfied by providing an amended application for certification, as described in § 86.084-21.

(4) Vehicle configuration fuel economy values, as determined in § 600.206(a), are grouped according to base level.

(i) If only one vehicle configuration within a base level has been tested, the fuel economy value from that vehicle configuration constitutes the fuel economy for that base level.

(ii) If more than one vehicle configuration within a base level has been tested, the vehicle configuration



fuel economy values are harmonically averaged in proportion to the respective sales fraction (rounded to the nearest 0.0001) of each vehicle configuration and the resultant fuel economy value rounded to the nearest 0.0001 mile per gallon.

(5) The procedure specified in § 600.207(a) will be repeated for each base level, thus establishing city, highway, and combined fuel economy values for each base level.

(6) For the purposes of calculating a base level fuel economy value, if the only vehicle configuration(s) within the base level are vehicle configuration(s) which are intended for sale at high altitude, the Administrator may use fuel economy data from tests conducted on these vehicle configuration(s) at high altitude to calculate the fuel economy for the base level.

(7) For alcohol dual fuel automobiles and natural gas dual fuel automobiles the procedures of paragraphs (a) (1) through (6) of this section shall be used to calculate two separate sets of city, highway, and combined fuel economy values for each base level.

(i) Calculate the city, highway, and combined fuel economy values from the tests performed using gasoline or diesel test fuel.

(ii) Calculate the city, highway, and combined fuel economy values from the tests performed using alcohol or natural gas tests fuel.

(b) For each model type, as determined by the Administrator, a city, highway, and combined fuel economy value will be calculated by using the projected sales and fuel economy values for each base level within the model type.

(1) If the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states, he will calculate fuel economy values for each model type for vehicles intended for sale in California and for each model type for vehicles intended for sale in the rest of the states.

(2) The sales fraction for each base level is calculated by dividing the projected sale of the base level within the model type by the projected sale of the model type and rounding the quotient to the nearest 0.0001.

(3) The city fuel economy values of the model type (calculated to the nearest 0.0001 mpg) are determined by dividing one by a sum of terms, each of which corresponds to a base level and which is a fraction determined by dividing:

- (i) The sale fraction of a base level, by
- (ii) The city fuel economy value for the respective base level.

(4) The procedure specified in paragraph (b)(3) of this section is repeated in an analogous manner to determine the highway and combined fuel economy values for the model type.

(5) For alcohol dual fuel automobiles and natural gas dual fuel automobiles the procedures of paragraph (b) (1) through (4) of this section shall be used to calculate two separate sets of city, highway, and combined fuel economy value for each model type.

(i) Calculate the city, highway, and combined fuel economy values from the tests performed using gasoline or diesel test fuel.

(ii) Calculate the city, highway, and combined fuel economy values from the tests performed using alcohol or natural gas test fuel.

15. A new § 600.209-93 is added to subpart C, to read as follows:

**§ 600.209-93 Calculation of fuel economy values for labeling.**

(a) For the purposes of calculating the city model type fuel economy value for labeling the manufacturer shall:

(1)(i) *For general labels for gasoline-fueled, diesel-fueled, and alcohol-fueled automobiles* multiply the city model type fuel economy value determined in § 600.207(b), by 0.90, rounding the product to the nearest whole mpg.

(ii) *For general labels for natural gas-fueled automobiles*, multiply the city model type fuel economy value determined in § 600.207(b), by 0.90, rounding the product to the nearest whole mpg.

(iii) *For general labels for alcohol dual fuel and natural gas dual fuel automobiles:*

(A) Multiply the city model type fuel economy calculated from the tests performed using gasoline or diesel test fuel as determined in § 600.207(b)(5)(i) by 0.90, rounding the product to the nearest whole mpg, and

(B) Multiply the city model type fuel economy calculated from the tests performed using alcohol or natural gas test fuel as determined in

§ 600.207(b)(5)(ii) by 0.90, rounding the product to the nearest whole mpg, or

(2)(i) *For specific labels for gasoline-fueled, diesel-fueled, and alcohol-fueled automobiles*, multiply the city model type fuel economy value determined in § 600.206(a)(2)(iii), by 0.90, rounding the product to the nearest whole mpg.

(ii) *For specific labels for natural gas-fueled automobiles*, multiply the city model type fuel economy value determined in § 600.206(a)(2)(iii), by 0.90, rounding the product to the nearest whole mpg.

(iii) *For specific labels for alcohol dual fuel and natural gas dual fuel automobiles:*

(A) Multiply the city model type fuel economy calculated from the tests performed using gasoline or diesel test fuel as determined in § 600.206(a)(2)(iii) and (4)(i) by 0.90, rounding the product to the nearest whole mpg, and

(B) Multiply the city model type fuel economy calculated from the tests performed using alcohol or natural gas test fuel as determined in § 600.206(a)(2)(iii) and (4)(ii) by 0.90, rounding the product to the nearest whole mpg, and

(b) For the purposes of calculating the highway model type fuel economy value for labeling the manufacturer shall:

(1)(i) *For general labels for gasoline-fueled, diesel-fueled, and alcohol-fueled automobiles*, multiply the highway model type fuel economy value determined in § 600.207(b), by 0.78, rounding the product to the nearest whole mpg.

(ii) *For general labels for natural gas-fueled automobiles*, multiply the highway model type fuel economy value determined in § 600.207(b), by 0.78, rounding the product to the nearest whole mpg.

(iii) *For general labels for alcohol dual fuel and natural gas dual fuel automobiles:*

(A) Multiply the highway model type fuel economy calculated from the tests performed using gasoline or diesel test fuel as determined in § 600.207(b)(5)(i) by 0.78, rounding the product to the nearest whole mpg, and

(B) Multiply the highway model type fuel economy calculated from the tests performed using alcohol or natural gas test fuel as determined in § 600.207(b)(5)(ii) by 0.78, rounding the product to the nearest whole mpg, or

(2)(i) *For specific labels for gasoline-fueled, diesel-fueled, and alcohol-fueled automobiles*, multiply the highway model type fuel economy value determined in § 600.206(a)(iii), by 0.78, rounding the product to the nearest whole mpg.

(ii) *For specific labels for natural gas-fueled automobiles*, multiply the highway model type fuel economy value determined in § 600.206(a)(iii), by 0.78, rounding the product to the nearest whole mpg.

(iii) *For specific labels for alcohol dual fuel and natural gas dual fuel automobiles:*

(A) Multiply the highway model type fuel economy calculated from the tests performed using gasoline or diesel test fuel as determined in § 600.206(a)(2)(iii) and (4)(i) by 0.78, rounding the product to the nearest whole mpg, and



(B) Multiply the highway model type fuel economy calculated from the tests performed using alcohol or natural gas test fuel as determined in § 600.206(a)(2)(iii) and (4)(ii) by 0.78, rounding the product to the nearest whole mpg.

(c) If the resulting city value determined in paragraph (a) of this section exceeds the resulting highway value determined in paragraph (b) of this section, the city value will be set equal to the highway value.

(d) For the purposes of calculating the combined fuel economy for a model type, to be used in determining annual fuel costs under § 600.307, the manufacturer shall (except as provided for in paragraph (d)(2) of this section):

(1)(i) *For gasoline-fueled, diesel-fueled, and alcohol-fueled automobiles*, harmonically average the unrounded city and highway values, determined in (a)(1)(i) and (b)(1)(i), or (a)(2)(i) and (b)(2)(i) of this section weighted 0.55 and 0.45 respectively, and round to the nearest whole mpg. (An example of this calculation procedure appears in appendix II of this part).

(ii) *For natural gas-fueled automobiles*, harmonically average the unrounded city and highway values, determined in (a)(1)(ii) and (b)(1)(ii), or (a)(2)(ii) and (b)(2)(ii) of this section weighted 0.55 and 0.45 respectively, and round to the nearest whole mpg.

(iii) *For alcohol dual fuel and natural gas dual fuel automobiles*, harmonically average the unrounded city and highway values from the tests performed using gasoline or diesel test fuel as determined in (a)(1)(iii)(A) and (b)(1)(iii)(A), or (a)(2)(iii)(A) and (b)(2)(iii)(A) of this section.

(2) If the resulting city value determined in paragraph (a) of this section exceeds the resulting highway value determined in paragraph (b) of this section, the combined fuel economy will be set equal to the highway value, rounded to the nearest whole mpg.

#### Subpart D—Fuel Economy Regulations for 1977 and Later Model Year Automobiles—Labeling

16. A new § 600.301–93 is added to subpart D, to read as follows:

##### § 600.301–93 General applicability.

(a) The provisions of this subpart are applicable to 1993 and later model year gasoline-fueled, diesel-fueled, alcohol-fueled, natural gas-fueled, alcohol dual fuel, and natural gas dual fuel automobiles.

(b)(1) Manufacturers that produce only electric vehicles are exempt from the requirement of this subpart, except with regard to the requirements in those

sections pertaining specifically to electric vehicles.

(2) Manufacturers with worldwide production (excluding electric vehicle production) of less than 10,000 gasoline-fueled and/or diesel powered passenger automobiles and light trucks may optionally comply with the electric vehicle requirements in this subpart.

17. A new § 600.307–93 is added to subpart D, to read as follows:

##### § 600.307–93 Fuel economy label format requirements.

(a)(1) Fuel economy labels must be:

(i) Rectangular in shape with a minimum height of 4.5 inches (114 mm) and a minimum length of 7.0 inches (178 mm) as depicted in appendix VIII.

(ii) Printed in a color which contrasts with the paper color.

(iii) The label shall have a contrasting border at least 0.25 inches (6.4 mm) wide.

(2) The top 50 percent of the total fuel economy label area shall contain only the following information and in the same format depicted in the label format in appendix VIII:

(i) The titles "CITY MPG" and "HIGHWAY MPG" centered over the applicable fuel economy estimates, in bold caps 10 points in size.

(ii)(A) *For gasoline-fueled, diesel-fueled, alcohol-fueled, and natural gas-fueled automobiles*, the city and highway fuel economy estimates calculated in accordance with § 600.209 (a) and (b).

(B) *For alcohol dual fuel automobiles and natural gas dual fuel automobiles*, the city and highway fuel economy estimates for operation on gasoline or diesel fuel as calculated in § 600.209(a)(1)(iii)(A) or (2)(iii)(A) and § 600.209(b)(1)(iii)(A) or (2)(iii)(A).

(iii) The fuel pump logo, and

(iv) The phrase "Compare this (vehicle/truck) to others in the FREE GAS MILEAGE GUIDE available at the dealer," shall be "dropped-out" of the top border as depicted in the sample label format in appendix VIII. The phrase shall be in lower case in a medium condensed type except for the words "FREE GAS MILEAGE GUIDE" which shall be capitalized in a bold condensed type and no smaller than 12 points in size.

(v)(A) *For alcohol-fueled automobiles*, the title "(insert appropriate fuel (example "METHANOL"))". The title shall be positioned above the fuel pump logo and shall be in upper case in a bold condensed type and no smaller than 12 points in size.

(B) *For natural gas-fueled automobiles*, the title "NATURAL GAS \*". The title shall be positioned above

the fuel pump logo and shall be in upper case in a bold condensed type and no smaller than 12 points in size.

(C) *For alcohol dual fuel automobiles and natural gas dual fuel automobiles*, the title "DUAL FUEL \*". The title shall be positioned above the fuel pump logo and shall be in upper case in a bold condensed type and no smaller than 12 points in size.

(3) The bottom 50 percent of the label shall contain the following information:

(i) The (vehicle/truck) description, as described in paragraph (c) or (d) of the section, when applicable.

(ii)(A) A statement: "Actual mileage will vary with options, driving conditions, driving habits and [vehicle's/truck's] condition. Results reported to EPA indicate that the majority of (vehicle/truck) with these estimates will achieve between \_\_\_\_ and \_\_\_\_ (mpg) in the city, and between \_\_\_\_ and \_\_\_\_ (mpg) on the highway."

(B) The range values for this statement are to be calculated in accordance with the following:

(1) The lower range values shall be determined by multiplying the city and highway estimates by 0.85, then rounding to the next lower integer value.

(2) The upper range values shall be determined by multiplying the city and highway estimates by 1.15 and rounding to the next higher integer value.

(iii)(A) A statement: "For comparison shopping, all [vehicles/trucks] classified as (insert category as determined in § 600.315) have been issued mileage ratings ranging from \_\_\_\_ to \_\_\_\_ (mpg) city and \_\_\_\_ to \_\_\_\_ (mpg) highway." (The range values are those determined in accordance with § 600.311.) or, when applicable,

(B) A statement: "A range of fuel economy values for other (vehicles/trucks) classified as (insert category as determined in § 600.315) is not available at this time." or by the statement: "Not available."

(iv)(A) The statement: "Estimated Annual Fuel Cost:" followed by the appropriate value calculated in accordance with paragraph (g) or (h) of this section. The estimated annual fuel cost value for alcohol dual fuel automobiles and natural gas dual fuel vehicles to appear on the fuel economy label shall be that calculated based on operating the vehicle on gasoline or diesel fuel as determined in § 600.307 (g) and (h).

(B) At the manufacturers option, it may include the fuel cost and the annual mileage interval used to determine the annual fuel cost.

(v) For the 1986 model year only, the statement: "Under EPA's previous fuel



economy program, used prior to the 1985 model, year this (vehicle/truck) would have received a single estimate of (insert unadjusted city value rounded to the nearest whole mpg, as determined in § 600.207(b)) mpg."

(vi)(A) The Gas Guzzler statement, when applicable (see paragraph (f) of this section), must be centered on a separate line between the bottom border and the Estimated Annual Fuel Cost statements. The words "Gas Guzzler" shall be highlighted.

(B) The type size shall be at least as large as the largest type size in the bottom 50 percent of the label.

(vii)(A) For alcohol-fueled and natural gas-fueled automobiles, the statement: "This vehicle operates on (insert appropriate fuel(s)) only." shall appear on the bottom border. The phrase shall be in lower case in a medium condensed type except for the fuels listed which shall be capitalized in a bold condensed type no smaller than 12 points in size.

(B) For natural gas-fueled automobiles, the statements: "All fuel economy values on this label pertain to gasoline equivalent fuel economy. To convert these values into units of miles per 100 cubic feet of natural gas, multiply by 0.823."

(C) For alcohol dual fuel automobiles and natural gas dual fuel automobiles, the statement: "This dual fuel vehicle operates on (insert appropriate alternative fuel(s)) or (insert gasoline or diesel as appropriate)." shall appear on the bottom border. The phrase shall be in lower case in a medium condensed type except for the words "gasoline" or "diesel" (as appropriate) and the other fuels listed, which shall be capitalized in a bold condensed type no smaller than 12 points in size.

(viii) For alcohol dual fuel automobiles and natural gas dual fuel automobiles, the statement: "All fuel economy values on this label pertain to (insert gasoline or diesel as appropriate) fuel usage. (insert other fuel(s) as appropriate) fuel(s) usage will yield different values. See the GAS MILEAGE GUIDE for information on (insert other fuel(s)) fuel(s) usage."

(4) The maximum type size for the statements located in the lower 50 percent of the label shall not exceed 10 points in size, except as provided for in paragraphs (a)(3)(vii) (A) and (B) of this section.

(b)(1) The city mpg number shall be displayed on the left and the highway mpg number displayed on the right.

(2)(i) Except for the digit "one," each mpg digit shall measure at least 0.35 inches by 0.6 inches (9 x 15 mm) in width and height respectively.

(ii) The digit "one," shall measure at least 0.2 inches by 0.8 inches (5 x 15 mm) in width and height respectively.

(3) The strike width of each mpg digit shall be at least 0.075 inches (1.9 mm).

(4)(i) MPG digits not printed as a single character shall be made of a matrix of smaller characters. This matrix shall be at least four characters wide by five characters high (with the exception of three characters wide for the numerical character denoting "one").

(ii) The small characters shall be made of successive overstrikes to form a reasonably dark and continuous line that approximates a single large character.

(5)(i) If a manufacturer chooses to enlarge the label from that depicted in appendix VIII, the logo and the fuel economy label values, including the titles "CITY MPG" and "HIGHWAY MPG" must be increased in the same proportion.

(ii) The area bounded by the bottom of the fuel pump logo to the top of the border must continue to represent at least 50 percent of the available label area.

(C) The vehicle description on general labels will be as follows:

(1) Model year;  
(2) Vehicle car line;  
(3) Engine displacement, in cubic inches, cubic centimeters, or liters whichever is consistent with the customary description of that engine;

(4) Number of engine cylinders or rotors;

(5) Additional engine description, if necessary to distinguish otherwise identical model types, as approved by the Administrator;

(6) Fuel metering system, including number of carburetor barrels, if applicable;

(7) Transmission class;

(8) Catalyst usage, if necessary to distinguish otherwise identical model types; and

(9) California emission control system usage, if applicable and if the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states.

(d) The vehicle description on specific labels will be as follows:

(1) The descriptions of paragraph (c) of this section;

(2) Inertia weight class;

(3) Axle ratio; and

(4) Other engine or vehicle parameters, if approved by the Administrator.

(e) Where the fuel economy label is incorporated with the pricing

information sticker, the applicable vehicle description, as set forth in paragraph (c) or (d) of this section, does not have to be repeated if the information is readily found on the Motor Vehicle Information and Cost Savings Act label.

(f)(1) For fuel economy labels of passenger automobile model types requiring a tax statement under § 600.513, the phrase "Gas Guzzler Tax: \$ \* \* \*".

(2) The tax value required by this paragraph shall be based on the combined fuel economy value for the model type calculated in accordance with § 600.207 and rounded to the nearest 0.1 mpg. Adjustments in accordance with § 600.209 will not be used to determine the tax liability.

(g) General labels. The annual fuel cost estimate for operating an automobile included in a model type shall be computed by using values for the fuel cost per gallon and average annual mileage, predetermined by the Administrator, and the fuel economy determined in § 600.209(d).

(1) The annual fuel cost estimate for a model type is computed by multiplying:

(i) Fuel cost per gallon (natural gas must be expressed in units of cost per equivalent gallon where 100 SCF=0.823 equivalent gallons) expressed in dollars to the nearest 0.05 dollar, by

(ii) Average annual mileage, expressed in miles per year to the nearest 1,000 miles per year, by

(iii) The average, rounded to the nearest 0.0001 gallons per mile of the fuel economy value determined in § 600.209(d) for a model type.

(2) The product computed in paragraph (g)(1) of this section and rounded to the nearest dollar per year will comprise the annual fuel cost estimate that appears on general labels for the model type.

(h) Specific labels. The annual fuel cost estimate for operating an automobile included in a vehicle configuration will be computed by using the values for the fuel cost per gallon and average mileage and the fuel economy determined in paragraph (h)(1)(iii) of this section.

(1) The annual fuel cost estimate for vehicle configuration is computed by multiplying:

(i) Fuel cost per gallon (natural gas must be expressed in units of cost per equivalent gallon where 100 SCF=0.823 equivalent gallons) expressed in dollars to the nearest 0.05 dollar, by

(ii) Average annual mileage, expressed in miles per year to the nearest 1,000 miles per year, by



(iii) The inverse, rounded to the nearest 0.0001 gallons per mile, of the fuel economy value determined in § 600.206(a)(2)(iii) for a vehicle configuration (city and highway values will be adjusted by the factors in § 600.209 (a) and (b) and combined according to § 600.209(d) before the calculation).

(2) The product computed in paragraph (h)(1) of this section and rounded to the nearest dollar per year will comprise the annual fuel cost estimate that appears on specific labels for that vehicle configuration.

18. A new § 600.501-93 is added to subpart F, to read as follows:

**§ 600.501-93 General applicability.**

(a) The provisions of this subpart are applicable to 1993 and later model year gasoline-fueled, diesel-fueled, alcohol-fueled, natural gas-fueled, alcohol dual fuel and natural gas dual fuel automobiles.

(b)(1) Manufacturers that produce only electric vehicles are exempt from the requirement of this subpart, except with regard to the requirements in those sections pertaining specifically to electric vehicles.

(2) Manufacturers with worldwide production (excluding electric vehicle production) of less than 10,000 gasoline-fueled and/or diesel powered passenger automobiles and light trucks may optionally comply with the electric vehicle requirements in this subpart.

19. A new § 600.510-93 is added to subpart F, to read as follows:

**§ 600.510-93 Calculation of average fuel economy.**

(a) Average fuel economy will be calculated to the nearest 0.1 mpg for the classes of automobiles identified herein, and the results of such calculations will be reported to the Secretary of Transportation for use in determining compliance with the applicable fuel economy standards.

(1) An average fuel economy calculation will be made for the category of passenger automobiles that is domestically manufactured as defined in § 600.511(d)(1).

(2) An average fuel economy calculation will be made for the category of passenger automobiles that is not domestically manufactured as defined in § 600.511(d)(2).

(3) An average fuel economy calculation will be made for the category of light trucks which is defined in § 600.511(e)(1) and has two-wheel drive.

(4) An average fuel economy calculation will be made for the category of light trucks which is defined

in § 600.511(e)(1) and has four-wheel drive.

(5) An average fuel economy calculation will be made for the category of light trucks which is defined in § 600.511(e)(2) and has two-wheel drive.

(6) An average fuel economy calculation will be made for the category of light trucks which is defined in § 600.511(e)(2) and has four-wheel drive.

(b) For the purpose of calculating average fuel economy under paragraph (c) of this section:

(1) All fuel economy data submitted in accordance with § 600.006(e) or § 600.502(c) shall be used.

(2) The combined city/highway fuel economy will be calculated for each model type in accordance with § 600.207 of this section except that:

(i) Separate fuel economy values will be calculated for model types and base levels associated with car lines that are:

(A) Domestically produced, and  
(B) Nondomestically produced and imported;

(ii) Total model year production data, as required by this subpart, will be used instead of sales projections;

(iii) The fuel economy value of diesel-powered model types will be multiplied by the factor 1.0 to correct gallons of diesel fuel to equivalent gallons of gasoline;

(iv) The fuel economy value will be rounded to the nearest 0.1 mpg;

(v) At the manufacturer's option, those vehicle configurations that are selfcompensating to altitude changes may be separated by sales into high-altitude sales categories and low-altitude sales categories. These separate sales categories may then be treated (only for the purpose of this section) as separate configurations in accordance with the procedure of paragraph § 600.207(a)(4)(ii), and

(3) The fuel economy value for each vehicle configuration is the combined fuel economy calculated according to § 600.206 except that:

(i) Separate fuel economy values will be calculated for vehicle configurations associated with car lines that are:

(A) Domestically produced, and  
(B) Nondomestically produced and imported;

(ii) Total model year production data, as required by this subpart will be used instead of sales projections; and

(iii) The fuel economy value of diesel-powered model types will be multiplied by the factor 1.0 to convert gallons of diesel fuel to equivalent gallons of gasoline.

(c) Except as permitted in paragraph (d) of this section, the average fuel

economy will be calculated individually for each category identified in § 600.510(a) as follows:

(1) Divide the total production volume of that category of automobiles by

(2) A sum of terms, each of which corresponds to a model type within that category of automobiles and is a fraction determined by dividing

(i) The number of automobiles of that model type produced by the manufacturer in the model year by:

(ii) For gasoline-fueled and diesel-fueled model types, the fuel economy calculated for that model type in accordance with paragraph (b)(2) of this section, and

(iii) For alcohol-fueled model types, the fuel economy value calculated for that model type in accordance with paragraph (b)(2) of this section divided by 0.15 and rounded to the nearest 0.1 mpg, and

(iv) For natural gas-fueled model types, the fuel economy value calculated for that model type in accordance with (b)(2) of this section divided by 0.15 and rounded to the nearest 0.1 mpg, and

(v) For alcohol dual fuel model types, for model years 1993 through 2004, the harmonic average of the following two terms; the result rounded to the nearest 0.1 mpg:

(A) The combined model type fuel economy value for operation on gasoline or diesel fuel as determined in § 600.207(b)(5)(i), and

(B) The combined model type fuel economy value for operation on alcohol fuel as determined in § 600.207(b)(5)(ii) divided by 0.15 provided the requirements of § 600.510(g) are met, and

(vi) For natural gas dual fuel model types, for model years 1993 through 2004, the harmonic average of the following two terms; the result rounded to the nearest 0.1 mpg:

(A) The combined model type fuel economy value for operation on gasoline or diesel as determined in § 600.207(b)(5)(i), and

(B) The combined model type fuel economy value for operation on natural gas as determined in § 600.207(b)(5)(ii) divided by 0.15 provided the requirements of § 600.510(g) are met.

(d) The Administrator may approve alternative calculation methods if they are part of an approved credit plan under the provisions of section 503(b) of U.S.C. 2003(b).

(e) For passenger categories identified in paragraphs (a) (1) and (2) of this section, the average fuel economy calculated in accordance with paragraph (c) of this section shall be adjusted using the following equation:



$$AFE_{adj} = AFE[(0.55 \times a \times c) + (0.45 \times c) + (0.5556 \times a) + 0.4487] / [(0.55 \times a) + 0.45] + IW$$

Where:

$AFE_{adj}$  = Adjusted average combined fuel economy, rounded to the nearest 0.1 mpg.

$AFE$  = Average combined fuel economy as calculated in paragraph (c) of this section, rounded to the nearest 0.0001 mpg.

$a$  = Sales-weight average (rounded to the nearest 0.0001 mpg) of all model type highway fuel economy values (rounded to the nearest 0.1 mpg) divided by the sales-weighted average (rounded to the nearest 0.0001 mpg) of all model type city fuel economy values (rounded to the nearest 0.1 mpg). The quotient shall be rounded to 4 decimal places. These average fuel economies shall be determined using the methodology of paragraph (c) of this section.

$c$  = 0.0022 for the 1988 model year.

$c$  = A constant value, fixed by model year.

For 1987, the Administrator will specify the  $c$  value after the necessary laboratory humidity and test fuel data become available. For 1988 and later model years, the Administrator will specify the  $c$  value after the necessary laboratory humidity and test fuel data become available.

$$IW = (9.2917 \times 10^{-3} \times SF_{3\text{ IWC}} \times FE_{3\text{ IWC}} - (3.5123 \times 10^{-3} \times SF_{4\text{ ETW}} \times FE_{4\text{ IWC}}))$$

Note: Any calculated value of  $IW$  less than zero shall be set equal to zero.

$SF_{3\text{ IWC}}$  = The 3000 lb. inertia weight class sales divided by total sales. The quotient shall be rounded to 4 decimal places.

$SF_{4\text{ ETW}}$  = The 4000 lb. equivalent test weight category sales divided by total sales. The quotient shall be rounded to 4 decimal places.

$FE_{3\text{ IWC}}$  = The sales-weighted average combined fuel economy of all 3000 lb. inertia weight class base levels in the compliance category. Round the result to the nearest 0.0001 mpg.

$FE_{4\text{ IWC}}$  = The sales-weighted average combined fuel economy of all 4000 lb. inertia weight class base levels in the compliance category. Round the result to the nearest 0.0001 mpg.

(f) The Administrator shall calculate and apply additional average fuel economy adjustments if, after notice and opportunity for comment, the Administrator determines that, as a result of test procedure changes not previously considered, such correction is necessary to yield fuel economy test results that are comparable to those obtained under the 1975 test procedures. In making such determinations, the Administrator must find that:

(1) A directional change in measured fuel economy of an average vehicle can be predicted from a revision to the test procedures;

(2) The magnitude of the change in measured fuel economy for any vehicle or fleet of vehicles caused by a revision to the test procedures is quantifiable

from theoretical calculations or best available test data;

(3) The impact of a change on average fuel economy is not due to eliminating the ability of manufacturers to take advantage of flexibility within the existing test procedures to gain measured improvements in fuel economy which are not the result of actual improvements in the fuel economy of production vehicles.

(4) The impact of a change on average fuel economy is not solely due to a greater ability of manufacturers to reflect in average fuel economy those design changes expected to have comparable effects on in-use fuel economy.

(5) The test procedure change is required by EPA or is a change initiated by EPA in its laboratory and is not a change implemented solely by a manufacturer in its own laboratory.

(g)(1) *Alcohol dual fuel automobiles and natural gas dual fuel automobiles* must provide equal or greater energy efficiency while operating on alcohol or natural gas as while operating on gasoline or diesel fuel. The following equation must hold true:

$$E_{alt}/E_{pet} > 1$$

where:

$E_{alt}$  =  $[FE_{alt}/(NHV_{alt} \times D_{alt})] \times 10^6$  = energy efficiency while operating on alternative fuel rounded to the nearest 0.01 miles/million BTU.

$E_{pet}$  =  $[FE_{pet}/(NHV_{pet} \times D_{pet})] \times 10^6$  = energy efficiency while operating on gasoline or diesel (petroleum) fuel rounded to the nearest 0.01 miles/million BTU.

$FE_{alt}$  is the fuel economy [miles/gallon for liquid fuels or miles/100 cubic feet for gaseous fuels] while operated on the alternative fuel as determined in § 600.113;

$FE_{pet}$  is the fuel economy [miles/gallon] while operated on petroleum fuel (gasoline or diesel) as determined in § 600.113;

$NHV_{alt}$  is the net (lower) heating value [BTU/lb] of the alternative fuel;

$NHV_{pet}$  is the net (lower) heating value [BTU/lb] of the petroleum fuel;

$D_{alt}$  is the density [lb/gallon for liquid fuels or lb/100 cubic feet for gaseous fuels] of the alternative fuel;

$D_{pet}$  is the density [lb/gallon] or petroleum fuel.

(i) The equation must hold true for both the city and highway fuel economy values for each test of each test vehicle.

(ii)(A) Manufacturers shall submit to the Administrator the net heating values and densities of the alcohol, natural gas, and diesel fuels. Manufacturers shall support these values by fuel property test data submitted by the fuel supplier or by the automobile manufacturer.

(B) Upon reviewing the values submitted by the manufacturer, the

Administrator shall determine the net heating values and densities of the alcohol, natural gas, and diesel fuels.

(iii) The net heating value and density of gasoline are to be determined by the manufacturer in accordance with § 600.113(c).

(2) For model years 1993 through 1995, alcohol dual fuel automobiles designed to operate on mixtures of alcohol and gasoline must, in addition to paragraph (g) (1) and (2) of this section, provide equal or superior energy efficiency while operating on a mixture of 50% alcohol, 50% gasoline by volume, as while operating on gasoline fuel. The following equation must hold true:

$$E_{50}/E_g > 1$$

where:

$E_{50}$  =  $[FE_{50}/(NHV_{50} \times D_{50})] \times 10^6$  = energy efficiency while operating on 50% alcohol, 50% gasoline rounded to the nearest 0.01 miles/million BTU.

$E_g$  =  $[FE_g/(NHV_g \times D_g)] \times 10^6$  = energy efficiency while operating on gasoline rounded to the nearest 0.01 miles/million BTU.

$FE_{50}$  is the fuel economy [miles/gallon] while operated on 50% alcohol, 50% gasoline as determined in § 600.113;

$FE_g$  is the fuel economy [miles/gallon] while operated on gasoline as determined in § 600.113;

$NHV_{50}$  is the net (lower) heating value [BTU/lb] of the 50/50 blend;

$NHV_g$  is the net (lower) heating value [BTU/lb] of gasoline;

$D_{50}$  is the density [lb/gallon] of the 50/50 blend;

$D_g$  is the density [lb/gallon] of the gasoline.

(i) The equation must hold true for both the city and highway fuel economy values for each test of each test vehicle.

(ii)(A) Manufacturers shall submit to the Administrator the net heating values and densities of the alcohol and 50/50 alcohol/gasoline blend. Manufacturers shall support these values by fuel property test data submitted by the fuel supplier or by the automobile manufacturer.

(B) Upon reviewing the values submitted by the manufacturer, the Administrator shall determine the net heating values and densities of the alcohol and 50/50 alcohol/gasoline blend.

(h) For each of the model years 1993 through 2004, and for each category of automobile identified in § 600.510(a), the maximum increase in average fuel economy determined in § 600.510(c) attributable to alcohol dual fuel automobiles and natural gas dual fuel automobiles shall be 1.2 miles per gallon or as provided for in paragraph (i) of this section.

(1) The Administrator shall calculate the increase in average fuel economy to



determine if the maximum increase provided in paragraph (h) of this section has been reached. The Administrator shall calculate the average fuel economy for each category of automobiles specified in § 600.510(a) by subtracting the average fuel economy values calculated in accordance with § 600.510 by assuming all alcohol dual fuel and natural gas dual fuel automobiles are operated exclusively on gasoline (or

diesel) fuel from the average fuel economy values determined in § 600.510(b)(2)(vi), (vii), and paragraph (c). The difference is limited to the maximum increase specified in paragraph (h) of this section.

(i) In the event that the Secretary of Transportation lowers the corporate average fuel economy standard applicable to passenger automobiles below 27.5 miles per gallon for any

model year during 1993 through 2004, the maximum increase of 1.2 mpg per year specified in paragraph (h) shall be reduced by the amount the standard was lowered, but not reduced below 0.7 mpg per year.

20. Appendix VIII to part 600 is revised to read as follows:

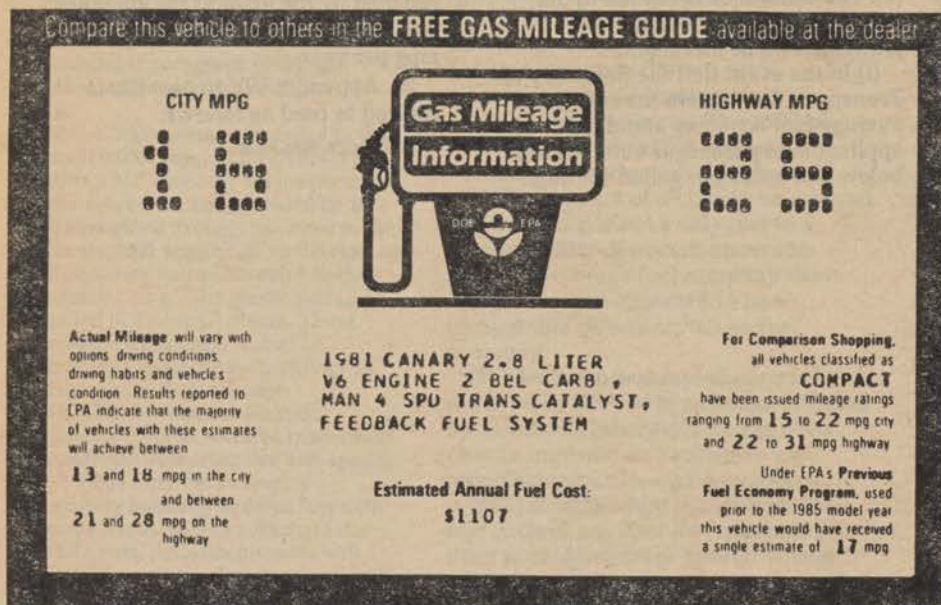
BILLING CODE 6560-50-M

A. Gasoline-fueled vehicle fuel economy label.

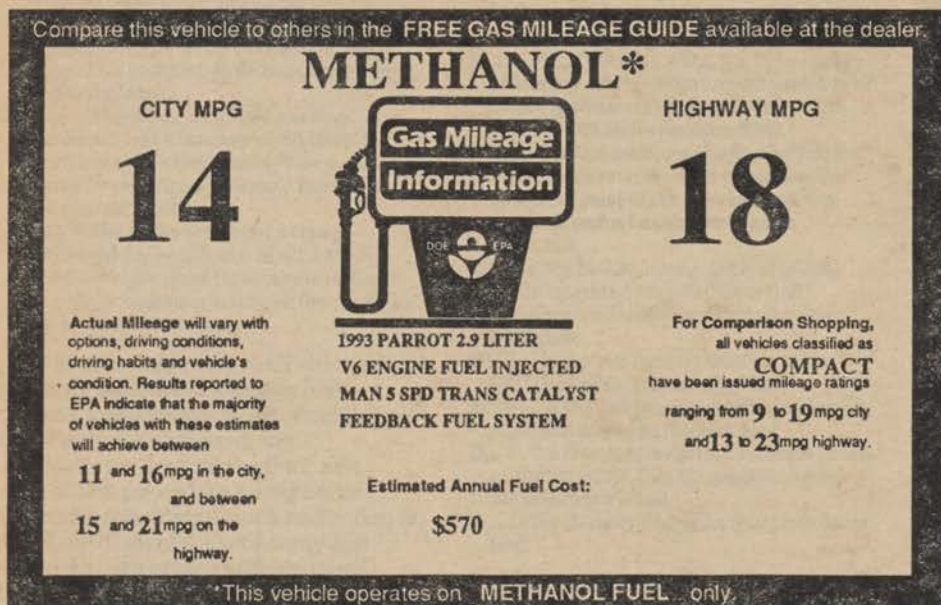
B. Methanol-fueled vehicle fuel economy label.



## APPENDIX VIII



a. Gasoline-fueled vehicle fuel economy label.



b. Methanol-fueled vehicle fuel economy label.



Compare this vehicle to others in the **FREE GAS MILEAGE GUIDE** available at the dealer.

## NATURAL GAS\*

CITY MPG

22

Actual Mileage will vary with options, driving conditions, driving habits and vehicle's condition. Results reported to EPA indicate that the majority of vehicles with these estimates will achieve between

19 and 25 mpg in the city,  
and between  
25 and 33 mpg on the  
highway



1993 SPARROW 2.4 LITER  
I4 ENGINE FUEL INJECTED  
AUTO 3 SPD TRANS CATALYST  
FEEDBACK FUEL SYSTEM

Estimated Annual Fuel Cost:  
\$608

HIGHWAY MPG

29

For Comparison Shopping,  
all vehicles classified as  
**COMPACT**  
have been issued mileage ratings

ranging from 18 to 30 mpg city  
and 24 to 36 mpg highway

All fuel economy values on this label pertain to gasoline equivalent fuel economy. To convert these values into units of miles per 100 cubic feet of natural gas, multiply by 0.823.

\*This vehicle operates on NATURAL GAS FUEL only.

c. Natural gas-fueled vehicle fuel economy label.

Compare this vehicle to others in the **FREE GAS MILEAGE GUIDE** available at the dealer.

## DUAL FUEL\*

CITY MPG

24

Actual Mileage will vary with options, driving conditions, driving habits and vehicle's condition. Results reported to EPA indicate that the majority of vehicles with these estimates will achieve between

20 and 28 mpg in the city,  
and between  
25 and 35 mpg on the  
highway



1993 FINCH 2.0 LITER  
I4 ENGINE FUEL INJECTED  
AUTO 3 SPD TRANS CATALYST  
FEEDBACK FUEL SYSTEM

Estimated Annual Fuel Cost:  
\$590

HIGHWAY MPG

30

For Comparison Shopping,  
all vehicles classified as  
**COMPACT**  
have been issued mileage ratings

ranging from 18 to 30 mpg city  
and 24 to 36 mpg highway.

All fuel economy values on this label pertain to GASOLINE fuel usage. NATURAL GAS fuel usage will yield different values. See the Gas Mileage Guide for information on NATURAL GAS.

\*This dual fuel vehicle operates on NATURAL GAS or GASOLINE.

d. Dual fuel vehicle fuel economy label.

-111-



**NATURAL GAS**

**22**

**13**

**20**

**18**

**16**

**14**

**12**

**10**

**8**

**6**

**4**

**2**

**0**

**DUAL FUEL**

**24**

**14**

**30**

**18**

**16**

**14**

**12**

**10**

**8**

**6**

**4**

**2**

**0**

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# Fastest Great Federal Laws

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Friday  
March 1, 1991

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## Part IV

### Department of Transportation

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#### Coast Guard

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33 CFR Part 151

46 CFR Part 25

Prevention of Pollution From Ships; Final  
Rule



## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 151

## 46 CFR Part 25

[CGD 88-002A]

RIN 2115-AD40

## Prevention of Pollution From Ships

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** This action amends the Coast Guard's garbage pollution regulations by adding waste management plan and placard requirements for certain U.S. ships, including recreational vessels and fixed or floating platforms. These provisions are needed to ensure that persons on the ship are made aware of garbage pollution laws and penalties and that garbage is discharged in accordance with a waste management plan based on those laws. This action should help reduce the number of unlawful garbage discharges and the resulting pollution.

**EFFECTIVE DATE:** April 1, 1991.**FOR FURTHER INFORMATION CONTACT:**

Lt. James H. McDowell, Project Manager, Port Safety and Security Division (G-MPS), (202) 267-0491.

**SUPPLEMENTARY INFORMATION:**

## Drafting Information

The principal persons involved in drafting this document are Lt. James H. McDowell, Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

## Regulatory History

On September 6, 1989, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Prevention of Pollution From Ships" in the *Federal Register* (54 FR 37084). On May 2, 1990, an interim final rule was published (55 FR 18578) to allow the public to comment on changes made following publication of the NPRM. On July 26, 1990, a notice was published (55 FR 30455) to suspend the effective date of 33 CFR 151.59 as it applies to placards on Great Lakes ships, on manned fixed platforms, and on manned floating platforms not in transit. This final rule resolves this issue for these ships and platforms.

The Coast Guard received thirteen letters commenting on the interim final rule. A public hearing was not requested and one was not held.

## Background and Purpose

The Marine Plastic Pollution Research and Control Act of 1987 (the Act) directed the Coast Guard to require certain ships (including fixed or floating platforms) of United States registry or nationality, and ships operated under the authority of the United States, wherever located, to maintain refuse record books and shipboard waste management plans, and to display placards which notify the crew and passengers of the requirements of Annex V of MARPOL 73/78 (the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978). This rulemaking is in response to that directive.

## Discussion of Comments

The "SUPPLEMENTARY INFORMATION" section of the interim final rule (55 FR 18578; May 2, 1990) expressly limited public comments to paragraphs (a)(2) and (b) of § 151.59, Placards. Paragraph (a)(2) was added to make it clear that the placarding requirements are to apply also to manned fixed or floating platforms. Paragraph (b) was revised to require more than one placard if necessary to sufficiently inform the crew and passengers. An opportunity to comment on the other provisions of this rulemaking was provided in the comment period to the NPRM.

All comments on these two paragraphs are addressed in this preamble. Comments received on other provisions, such as § 151.57, Waste Management Plans, or on other issues, such as the refuse record books, are not addressed in this preamble. These other comments not addressed here may be considered in separate, future rulemakings as the Coast Guard assesses the effectiveness of this rule.

1. Five comments pointed out that § 151.59 should apply to manned floating platforms only when they are in transit because there are already garbage discharge regulations in 33 CFR 151.73 for platforms when they are engaged in the exploration, exploitation, or associated offshore processing of seabed mineral resources. On July 26, 1990, the Coast Guard published a notice in the *Federal Register* (55 FR 18578) suspending indefinitely the effective date for the placarding requirements applicable to manned fixed platforms and manned floating platforms not in transit.

The Coast Guard agrees that it would be confusing to require manned floating platforms not in transit, as well as manned fixed platforms, to post placards containing information that

conflicts with the actual discharge requirements applicable to those platforms. A platform is stationary when engaged in the exploration, exploitation, or associated offshore processing of seabed mineral resources. The applicable discharge restrictions do not change while the platform is engaged in these activities. Conversely, a floating platform in transit is mobile and the discharge regulations applicable to the platform change as its distance from land changes. Placards serve as a ready reference to remind the crew of the restrictions applicable for that particular distance from land. When the platform is stationary, its waste management plan serves this same purpose. Therefore, § 151.59(a)(2) has been changed so that the placarding requirement no longer applies to manned floating platforms not in transit and to manned fixed platforms.

2. One comment stated that § 151.59 would fail to prohibit the dumping of solid wastes from offshore fixed or floating platforms, which is in violation of 30 CFR 250.40(b)(6).

The Coast Guard concurs that § 151.59 does not prohibit the dumping of wastes from these platforms. Section 151.59 requires the posting of a placard and outlines the information to be displayed on the placard. As discussed in paragraph 1 above, § 151.59(a)(2) has been changed so that the placarding requirement no longer applies to manned floating platforms not in transit and to manned fixed platforms. This should remove any confusion on this point.

3. Two comments were received concerning the number of placards required under § 151.59(b). One comment suggested that a placard be posted at each entrance to the ship, every 100 feet of open deck area with each deck considered separately, and any other location specified by the Captain of the Port (COTP). Another suggested setting a maximum of three placards per ship.

In drafting § 151.59(b), the Coast Guard considered the wide variety of ships and their various configurations. Paragraph (b) was drafted to be as flexible as possible. There was no intention to set a fixed or maximum number of placards to be posted. The only requirement was that they be posted in prominent locations and in sufficient numbers so that they may be read by the crew and passengers. On some larger ships, three placards may not be sufficient to notify all the crew of these restrictions. Posting placards every 100 feet of open deck space could



be more than is necessary to inform crew and passengers.

The Coast Guard has concluded that the master or person in charge of the ship is best suited to determine the number of placards required and where they should be posted, to best inform the passengers and crew of the discharge restrictions. However, additional placards may be required if the COTP determines that the number or location of the placards is inadequate to inform the crew and passengers.

#### Discussion of Changes

In addition to the changes to § 151.59(a)(2) explained under "Discussion of Comments", the Coast Guard has made two other changes, both intended to clarify certain provisions of the interim final rule.

1. A requirement that placards display the information specified in § 151.59(c)(2)(ii) through (c)(2)(v) of the interim final rule may mislead the placards' readers to assume that garbage may be discharged by ships operating beyond three miles from the nearest land on the Great Lakes. In fact, the discharge of all garbage in the navigable waters of the U.S., which include the Great Lakes and their connecting or tributary waters, is prohibited by existing § 151.66.

Therefore, a new paragraph (e) has been added which allows ships, while operating on the Great Lakes or their connecting or tributary waters, the option of having placards which address only the garbage discharge restrictions applicable to those waters, i.e. that the discharge of all garbage in those waters is prohibited. This does not change the placarding requirement as published in the interim final rule for ships while operating on waters other than the Great Lakes or their connecting or tributary waters.

A definition of "Great Lakes" has been added to § 151.05, Definitions. The definition is consistent with the definition of "Great Lakes" used in other Coast Guard regulations.

2. The words "applicable to the vessel" have been added to 46 CFR 25.50-1, which reminds owners of uninspected vessels that their vessels also must meet the garbage discharge, waste management plan, and placard requirements of 33 CFR part 151. The words are added to make it clear that not all uninspected vessels must meet all of the requirements of Part 151, but only those applicable to the particular vessel. For example, if the vessel is less than 26 feet in length, it need not meet the placard requirements in § 151.59. (See § 151.59(a)(1).)

#### Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). A final Regulatory Evaluation is available in the docket for inspection or copying at the Office of the Marine Safety Council, U.S. Coast Guard Headquarters, room 3406, 2100 Second Street SW., Washington, DC 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

Changes to the rule since publication of the interim final rule will impose no new costs or burdens. In fact, they will reduce both costs and burdens for certain ships, while still providing protection for the environment. The changes to § 151.59(a)(2) remove floating platforms not in transit and fixed platforms from the placarding requirements of § 151.59. The discharge requirements for these platforms are covered already under existing § 151.73 and the wording of placards under § 151.59 would be misleading. This change will eliminate the cost of placards under § 151.59 for these platforms. Also, the addition of an optional placard under § 151.59(e) for ships operating on the Great Lakes may reduce the costs slightly for those ships because the wording of the optional placard can be shorter than that of the standard placard.

The total annual projected cost for all ships subject to the final rule is estimated to be \$4.36 million. This cost is allocated as follows: merchant vessels, \$0.059 million; passenger vessels, \$2.247 million; towing vessels, \$0.024 million; fishing vessels, \$494 million; recreational boats, \$1.308 million; vessels engaged in offshore oil and gas operations and manned fixed or floating platforms, \$217 million; and research and other miscellaneous classes of vessels, \$0.012 million. The differences among these figures are due primarily to the differences in population of each type of ship subject to these requirements. Also the totals have been adjusted to reflect the changes made since publication of the interim final rule.

These regulations should benefit the environment by reducing the number of improper discharges. The amount of that benefit, however, is not quantifiable.

#### Small Entities

A regulatory flexibility analysis was conducted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) to evaluate the impact of the

final rule on small entities. The analysis has been made part of the final Regulatory Evaluation. In the analysis, an entity is considered small, under this definition, if its annual receipts do not exceed \$3.5 million.

The changes to the rule, as discussed under the "Regulatory Evaluation" section of this preamble, will have no effect on small entities, other than to slightly reduce placarding costs for ships operating on the Great Lakes.

The Coast Guard does not have accurate information on how many ships would qualify as small entities. No comments were received on the draft regulatory flexibility analysis. However, the Coast Guard estimates that this rule will affect 2,200 miscellaneous U.S. flag vessels of less than 1,000 gross tons, 14,800 fishing vessels, and 600 vessels engaged in offshore oil and gas operations.

Most vessels which are small entities will have to comply with the requirements for placards and waste management plans. The Coast Guard estimates that the cost of compliance will average less than 0.6 percent of the net income or the operational cost of each small entity. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this final rule will not have a significant economic impact on a substantial number of small entities.

#### Collection of Information

This rulemaking contains information collection requirements. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and OMB has approved them. The section number is § 151.57 and the corresponding OMB approval number is OMB Control Number 2115-0120.

#### Federalism

The Coast Guard has analyzed the final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Environment

The Coast Guard has considered the environmental impact of the final rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is



available in the docket for inspection or copying at the address in the "Regulatory Evaluation" section of this preamble.

The regulations are administrative in nature and are expected to have some positive but no negative impact on the environment. The regulations should contribute to the reduction of the occurrence of plastic, as well as other ship-generated garbage, in the marine environment. The placarding requirement (§ 151.59) is intended to remind persons of their pollution prevention responsibilities under the law and the waste management plan (§ 151.57) should reduce the number of unlawful discharges.

#### List of Subjects

##### 33 CFR Part 151

Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

##### 46 CFR Part 25

Fire prevention, Marine safety.

Accordingly, the interim rule amending 33 CFR part 151 and 46 CFR part 25 which was published at 55 FR 18578-18583 on May 2, 1990, is adopted as a final rule with the following changes:

#### TITLE 33—[AMENDED]

##### PART 151—[AMENDED]

1. The authority citation for part 151, subpart A, continues to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C) and 1903(b); E.O. 11735, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46.

2. Section 151.05 is amended by adding a new definition to read as follows:

##### § 151.05 Definitions.

As used in this part—

\* \* \* \* \*

*Great Lakes* means the Great Lakes of North America and the St. Lawrence River west of a rhumb line drawn from Cap des Rosiers to West Point, Anticosti Island, and, on the north side of Anticosti Island, the meridian of longitude 63 degrees west.

\* \* \* \* \*

3. Section 151.59 is added to read as follows:

##### § 151.59 Placards.

(a) This section applies to the following:

(1) Each manned U.S. ship (other than a fixed or floating platform) that is 26 feet or more in length.

(2) Each manned floating platform in transit that is—

(i) Documented under the laws of the United States; or

(ii) Operating under the authority of the United States, including, but not limited to, a lease or permit issued by an agency of the United States.

(b) The master or person in charge of each ship under paragraph (a)(1) or (a)(2) of this section shall ensure that one or more placards meeting the requirements of this section are displayed in prominent locations and in sufficient numbers so that they can be read by the crew and passengers. These locations must be readily accessible to the intended reader and may include embarkation points, food service facilities, garbage handling spaces, and common spaces on deck. If the Captain of the Port determines that the number or location of the placards is insufficient to adequately inform crew and passengers, the Captain of the Port may require additional placards and may specify their locations.

(c) Each placard must be at least nine inches wide by four inches high, made of a durable material, and lettered with letters at least 1/8 inch high.

(d) Except as under paragraph (e) of this section, the placard must notify the reader of the following:

(1) The discharge of plastic or garbage mixed with plastic into any waters is prohibited.

(2) The discharge of all garbage is prohibited in the navigable waters of the United States and, in all other waters, within three nautical miles of the nearest land.

(3) The discharge of dunnage, lining, and packing materials that float is prohibited within 25 nautical miles of the nearest land.

(4) Other unground garbage may be discharged beyond 12 nautical miles from the nearest land.

(5) Other garbage ground to less than one inch may be discharged beyond three nautical miles of the nearest land.

(6) A person who violates the above requirements is liable for a civil penalty of up to \$25,000, a fine of up to \$50,000, and imprisonment for up to five years for each violation.

(7) Regional, State, and local restrictions on garbage discharges also may apply.

(e) For ships while operating on the Great Lakes or their connecting or tributary waters, the placard must—

(1) Notify the reader of the information in paragraph (d) of this section; or

(2) Notify the reader of the following:

(i) The discharge of all garbage into the Great Lakes or their connecting or tributary waters is prohibited.

(ii) A person who violates the above requirement is liable for a civil penalty of up to \$25,000, a fine of up to \$50,000, and imprisonment for up to five years for each violation.

#### TITLE 46—[AMENDED]

##### PART 25—[AMENDED]

4. The authority citation for part 25 continues to read as follows:

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 3306, 4104, and 4302; 49 CFR 1.46.

5. Section 25.50-1 is revised to read as follows:

##### § 25.50-1 Criteria.

Each uninspected vessel must meet the garbage discharge, waste management plan, and placard requirements of 33 CFR part 151 applicable to the vessel.

Note: 33 CFR 151.67 prohibits the discharge of plastic or garbage mixed with plastic into the sea or the navigable waters of the United States. "Plastic" and "garbage" are defined in 33 CFR 151.05.

Dated: January 29, 1991.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91-4739 Filed 2-28-91; 8:45 am]

BILLING CODE 4910-14-M



# Get the Paper

Friday  
March 1, 1991

## Part V

## Federal Emergency Management Agency

### Mortgage Portfolio Protection Program; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY  
MORTGAGE PORTFOLIO PROTECTION PROGRAM  
NOTICE

AGENCY: Federal Emergency Management Agency  
ACTION: Notice  
DATE: 3/1/91

Summary: The Federal Emergency Management Agency (FEMA) is announcing the availability of the Mortgage Portfolio Protection Program (MPP) to eligible mortgage holders. The MPP is a voluntary program that allows mortgage holders to protect their investment in a mortgage portfolio by purchasing a portfolio protection policy. The MPP is available to mortgage holders who are members of the National Automated Clearing House Association (NACHA) and who have a mortgage portfolio of at least \$100,000. The MPP is available to mortgage holders who are members of the NACHA and who have a mortgage portfolio of at least \$100,000. The MPP is available to mortgage holders who are members of the NACHA and who have a mortgage portfolio of at least \$100,000.

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Mortgage Portfolio Protection Program

**AGENCY:** Federal Insurance  
Administration, Federal Emergency  
Management Agency.

**ACTION:** Notice.

**SUMMARY:** The Federal Insurance Administration (FIA), the Directorate within the Federal Emergency Management Agency (FEMA) responsible for the administration of the National Flood Insurance Program (NFIP), has developed a Mortgage Portfolio Protection Program (MPPP). The MPPP is intended for use by mortgage lenders in securing flood insurance protection for those properties that are part of the lending institution's mortgage portfolio when such properties:

- (1) Have been determined to be located within special flood hazard areas,
- (2) Are located within a community that is participating in the NFIP, and
- (3) Are not covered by a flood insurance policy even after required notices have been given to the property owner (mortgagor) by the lending institution of the requirement for obtaining and maintaining such coverage, but the mortgagor has failed to respond.

Thus, the MPPP is a mechanism by which lending institutions, mortgage servicing companies, and others servicing mortgage loan portfolios can bring their mortgage loan portfolios into compliance with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973.

**EFFECTIVE DATE:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** H. Joseph Coughlin, Jr., Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472; telephone (202) 646-2780.

**SUPPLEMENTARY INFORMATION:** The Federal Insurance Administration (FIA) has developed the Mortgage Portfolio Protection Program (MPPP) as a mechanism to be used as a last resort and at the option of a lending institution for securing flood insurance coverage for properties which are part of the lending institution's mortgage portfolio. The goals of the MPPP are, through the MPPP notification process, to encourage property owners whose structures are potentially susceptible to flood damage to purchase a conventional NFIP flood insurance policy, or, failing that, have

the lending institution obtain an MPPP policy on the structure.

It is expected that the MPPP notification process will result in a greater number of conventional NFIP Standard Flood Insurance Policies being written. Thus, the MPPP will benefit the lending community by providing a vehicle through which lending institutions can bring their mortgage portfolios into compliance with Federal law as well as protect the collateral security for such loans. The MPPP will also benefit: (1) The policyholder who will have financial protection against loss in the event of flood damage, (2) the taxpayers, since those policyholders will not need to apply for disaster assistance related to damages for which their policies will respond and they will not need to write off uninsured casualty losses on their taxes, both of which positively impact the Federal budget, and (3) all NFIP policyholders, since the greater number of policies-in-force will result in a greater spread of the risk which should mean that the overall cost of the insurance will hold steady or even possibly be lowered depending upon the magnitude of the insurance reserves.

#### Background

The National Flood Insurance Act of 1968 (42 U.S.C. 4001, *et seq.*), as amended, created the NFIP to provide federally backed flood insurance to property owners whose properties are located within communities which have become eligible to participate in the NFIP. Such communities establish their eligibility by adopting and enforcing floodplain management measures to regulate new construction and substantial improvement within their special flood hazard areas so as to eliminate or minimize future flood damage. A special flood hazard area is defined as the area within the flood plain having a one percent or greater chance of flood occurrence in any given year (also known as the 100-year [or base] flood). Special flood hazard areas are delineated on maps issued by the Federal Emergency Management Agency (FEMA) for individual communities.

The NFIP was amended by the Flood Disaster Protection Act of 1973, Public Law 93-234, to require the purchase of flood insurance as a condition of receipt of federal and federally related financing for acquisition and construction purposes in flood hazard areas of participating communities and to require Federal Instrumentalities to direct lenders regulated by them, or whose deposits are insured by them, to require flood insurance protection for any improved real property located in a

special flood hazard area of a participating community when such real property serves as security for any loan.

The term "Federal Instrumentality" is defined in section 3(a)(5) of the 1973 Act as the "Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board (currently, Office of Thrift Supervision), the Federal Savings and Loan Insurance Corporation (whose responsibilities have been taken over by the Federal Deposit Insurance Corporation), and the National Credit Union Administration."

The FIA does not have any statutory or regulatory authority over lending institutions nor does the 1973 Act, by itself, require or prohibit activities on the part of lenders directly. Rather, the Act directs the Federal Instrumentalities to adopt regulations requiring lenders subject to their jurisdiction to compel borrowers to purchase flood insurance protecting any "improved real estate or mobile home" located within a special flood hazard area of a community participating in the NFIP, if the building or mobile home (and any personal property securing such loan) were to be used as security for the loan. Lenders should follow the interpretation of the particular Federal Instrumentality or Agency to whose regulations they are subject for authoritative guidance.

The history of the NFIP since the enactment of the 1973 Act indicates that lenders have not consistently required the purchase and/or renewal of flood insurance policies as required by regulations issued by the Federal Instrumentalities and Agencies. The less compliance there is in conjunction with loan origination, the greater the problem for servicers of loan portfolios. Therefore, over the past two and a half years, FIA has been working with interested parties to develop a program to help lenders and mortgage servicers meet their statutory duty to ensure that properties in their mortgage portfolios comply with Federal law related to flood insurance. This collaboration has resulted in the introduction of the MPPP.

#### Implementation

The MPPP will be available to all lending institutions and Write Your Own (WYO) companies which elect to participate by signing an agreement to adhere to the MPPP criteria and requirements, including specific multiple notices to a borrower whose property is in a special flood hazard area as delineated on the appropriate FEMA map concerning the need to purchase and maintain a flood insurance policy



for the duration of the mortgage loan and encouraging the borrower to obtain a Standard Flood Insurance Policy (SFIP) from the borrower's local insurance agent.

The MPPP cannot be used in connection with new loan transactions but can be used only in connection with a lender's efforts to bring its mortgage portfolio into compliance with the flood insurance purchase requirements of Federal law. A flood insurance policy under the MPPP can be purchased only from a WYO company and only as a last resort for those properties where the borrower, after having been given the required notices of the need to purchase a flood insurance policy, has not done so.

A policy purchased under the MPPP (1) will be written covering the interest of both the mortgagee and the mortgagor, (2) will be rated using special high rates, reflecting the uncertainty as to the degree of risk due to the limited underwriting data required, and (3) will be for a policy term of one year only (subject to renewal after a special renewal notification process). Both building and contents coverage will be available under the MPPP. The coverage limits available under the Regular Program will be those available to single-family buildings and their contents, i.e., \$185,000 for building coverage and \$80,000 for contents. The higher limits that are available under the conventional SFIP to other occupancy types such as small business, other residential, or non-residential, can be provided under the MPPP policy only if the occupancy type can be identified on the application. If the mortgaged property is located in a community participating in the Emergency phase of the NFIP, then the covered limits available will be the lower limits available in that phase, i.e., \$35,000 for building coverage and \$10,000 for contents. Again, if the higher Emergency phase limits are desired for other types of property, then the building occupancy type must be provided at the inception of the policy or when that information may become available, but it must be prior to any loss.

The current SFIP Dwelling Form and General Property Form will be used, depending upon the type of structure insured. In the absence of building occupancy information, the Dwelling Form will be used. The current NFIP rules will apply with respect to the waiting period and effective dates of coverage. With respect to the premium payment, the lender or mortgage servicer (or Payor) has the option of

following its usual business practices so long as the NFIP rules are followed.

The rates (per \$100 of insurance) are as follows:

Zone	Building	Contents
A Zone—All building/occupancy types.....	\$1.25	\$1.25
V Zone—All building/occupancy types.....	\$3.00	\$3.00

In the event of a loss, the policy will have to be reformed if the wrong rate has been applied for the zone in which the property is located. The amount of coverage may be changed if the building occupancy supports a greater amount than the amount of insurance in force but this must be done prior to a loss. Further, since the underwriting information available at the policy's inception may be limited, it will be the WYO company's responsibility (acting on behalf of the mortgage lender) to notify the mortgagor of all coverage limitations at the inception of coverage and to impose any applicable limitations (e.g., the coverage restrictions in basements) at the time of loss adjustment.

The WYO companies which have so far agreed to participate in the NFIP MPPP are as follows:

American Bankers Insurance Company of Florida, Miami, FL  
 American Loyalty Insurance Company, Gahanna, OH  
 American Modern Home Insurance Company, Cincinnati, OH  
 American Road Insurance Company, Dearborn, MI  
 Bankers Insurance Company, St. Petersburg, FL  
 Bankers & Shippers Insurance Company, Burlington, NC  
 Colonial Penn Insurance Company, Philadelphia, PA  
 Consolidated Insurance Group, Inc. (American Centennial Insurance Co.) (Wesco Insurance Company), Wilmington, DE  
 Empire Fire and Marine Insurance Company, Omaha, NE  
 First Colonial Insurance Company, Jacksonville, FL  
 Florida Fire & Casualty Insurance Co., Ft. Lauderdale, FL  
 Great Pacific Insurance Company, San Bruno, CA  
 Independent Fire Insurance Company, Jacksonville, FL  
 Island Insurance Company, LTD, Honolulu, HI  
 Minnesota Mutual Fire & Casualty, Minnetonka, MN  
 Omaha Property and Casualty Company, Omaha, NE  
 Pan American Insurance Company, Hato Rey, PR  
 Patrons Mutual Insurance Company of Connecticut, Glastonbury, CT

Redland Insurance Company, Council Bluffs, IA

Regency Insurance Company, Hallandale, FL  
 Unisun Insurance Company, Charleston, SC  
 U.S. Security Insurance Company, Miami, FL

The Mortgage Portfolio Protection Program Write Your Own Company Guidelines and Requirements, as referenced in this document, is reproduced in its entirety as appendix A to this notice.

Dated: February 22, 1991.

C. M. "Bud" Schauerte,

Federal Insurance Administrator.

Appendix A—Federal Emergency Management Agency, Federal Insurance Administration, National Flood Insurance Program; Mortgage Portfolio Protection Program, Write Your Own Company Guidelines and Requirements

December 14, 1990.

## Background

The Mortgage Portfolio Protection Program (MPPP) will be introduced on January 1, 1991 as an additional tool, provided by the Federal Insurance Administration (FIA), to assist the mortgage lending and servicing industries, in response to their requests of the past few years, in bringing their mortgage portfolios in compliance with the flood insurance requirements of the Flood Disaster Act of 1973.

The MPPP is not intended to act as a substitute for the need for mortgagees to review all mortgage loan applications at the time of loan origination and comply with flood insurance requirements as appropriate.

It is expected that the proper implementation of the various requirements of this MPPP will result in mortgagees, following their notification of the need for flood insurance will either show evidence of such a policy, contacting their local insurance agent or appropriate Write Your Own (WYO) company and purchasing the necessary coverage. It is also intended that flood insurance policies be written under the MPPP only as a last resort, and only on mortgages whose mortgagors have failed to respond to the various notifications required by this MPPP.

The following represents the criteria and requirements that must be followed by all parties engaged in the sale of flood insurance under the National Flood Insurance Program's Mortgage Portfolio Protection Program:



## Requirements for Participating in the MPPP

### 1. General

a. All mortgagors notified, in conjunction with this Program, of their need to purchase flood insurance, must be encouraged to obtain a Standard Flood Insurance Policy (SFIP) from their local agent.

b. When, as a result of a mortgage portfolio review, properties are determined to be in an SFHA, the mortgagee/mortgage servicing company has no evidence of flood insurance on these properties and the mortgagors have failed to respond to notices requesting flood insurance, the MPPP provides a vehicle for lending institutions to obtain (force place) the required flood insurance coverage. The MPPP process can be accomplished with limited underwriting information and with special flat rates.

c. In the event of a loss, the policy will have to be reformed if the wrong rate has been applied for the zone the property is located in. Also, the amount of coverage may have to be changed if the building occupancy does not support that amount.

d. It will be the WYO companies' responsibility to notify the mortgagor of the coverage limitations at the inception of coverage and to impose those limitations at the time of loss adjustment.

### 2. WYO Arrangement Article III—Fees

a. With the implementation of the MPPP there is no change in the method of WYO company allowance from that which is provided in the Financial Assistance/Subsidy Arrangement for all flood insurance written for an initial period of two years.

b. The allowance level percentage referenced by the Arrangement will be used for the first two years while the success of the MPPP is being measured. One of the measures of success will be the level of policies written through MPPP that remain rated as such, versus the expected greater number of policies generated in the conventional NFIP as a result of the MPPP notification process.

### 3. Use of WYO Company Fees for Lenders/Servicers or Others

a. No portion of the allowance that WYO companies retain under the WYO Financial Assistance/Subsidy Arrangement for the MPPP may be used to pay, reimburse or otherwise remunerate a lending institution, mortgage servicing company, or other similar type of company that the WYO company may work with to assist in their flood insurance compliance efforts.

b. The only exception to this is a situation where the lender/servicer may be actually due a commission on any flood insurance policies written on any portion of the institution's portfolio because it was written through a licensed property insurance agent on their staff or through a licensed insurance agency owned by the institution or servicing company.

### 4. Notification

a. *WYO Company/Mortgagee*—Any WYO Company participating in the MPPP must notify the lender or servicer, for which it is providing the MPPP capability, of the requirements of the MPPP. The WYO company must obtain signed evidence from each such lender or servicer indicating their receipt of this information, and keep a copy in their files. An example of such evidence of receipt follows as Addendum #5.

b. *Mortgagee to Mortgagor*—In order to participate in the MPPP, the lender (or its authorized representative, which will typically be the WYO company providing them the coverage through the MPPP) must notify the borrower of the following, at a minimum:

- (1) The requirements of the Flood Disaster Protection Act of 1973,
- (2) The flood zone location of their property,
- (3) The requirement for flood insurance,
- (4) The fact that the lender has no evidence of the borrower having flood insurance,
- (5) The amount of coverage being required and its cost under the MPPP, and
- (6) The options of the borrower for obtaining conventionally underwritten flood insurance coverage and the potential cost benefits of doing so.

A more detailed discussion of the notification requirements is made a part of this program document in both Section 15 and as Addendums 1&2.

### 5. Eligibility

a. *Type of Use*—The MPPP will be allowed only in conjunction with mortgage portfolio reviews and the servicing of those portfolios by lenders and mortgage servicing companies. The MPPP is not allowed to be used in conjunction with any form of loan origination.

b. *Type of Property*—The standard NFIP rules apply, and all types of property eligible for coverage under the NFIP will be eligible for coverage under the MPPP.

### 6. Source of Offering

The force placement capability will be offered by the WYO companies only

and not by the NFIP Servicing Agent (CSC).

### 7. Dual Interest

The policy will be written covering the interest of both the mortgagee and the mortgagor. The name of the mortgagor must be included on the Application Form. It is not, however, necessary to include the mortgagee as a named insured because the Mortgage Clause (Article VIII.O of the Dwelling Form and Article VII.M of the General Property Form) affords building coverage to any mortgagee named as mortgagee on the Flood Insurance Application. If contents coverage for the mortgagee is desired, the mortgagee should be included as a named insured.

### 8. Term of Policy

NFIP policies written under the MPPP will be for a term of one year only (subject to the renewal notification process).

### 9. Coverage Offered

Both building and contents coverage will be available under the MPPP. The coverage limits available under the Regular Program will be \$185,000 for building coverage and \$60,000 for contents. If the WYO company wishes to provide higher limits that are available to other occupancy types such as small business, other residential, or non-residential, it may do so only if it can indicate that occupancy type as appropriate. If the mortgaged property is in an Emergency Program Community, then the coverage limits available will be \$35,000 for building coverage and \$10,000 for contents. Again, if the higher limits are desired for other types of property, then the building occupancy type must be provided at the inception of the policy or when that information may become available, but it must be prior to any loss.

### 10. Policy Form

The current SFIP Dwelling Form and General Property Form will be used, depending upon the type of structure insured. In the absence of building occupancy information, the Dwelling Form should be used.

### 11. Waiting Period

The current NFIP rules for the waiting period and effective dates apply to the MPPP.

### 12. Premium Payment

The current rules applicable to the NFIP will apply. The lender or servicer (or Payor) has the option to follow its usual business practices regarding



premium payment, so long as the NFIP rules are followed.

### 13. Underwriting—Application

a. The MPPP will require less underwriting data than is normally required under the standard NFIP rules and regulations. The MPPP data requirements for rating, processing and reporting are, at a minimum:

- (1) Name and mailing address of insured (mortgagor—also see Dual Interest),
- (2) Address of insured (mortgaged) property,
- (3) Community information (complete NFIP map panel number and date; program type, Emergency or Regular) countywide maps,
- (4) Occupancy type (so statutory coverage limits are not exceeded. This data may be difficult to obtain. Also see Coverage Offered.),
- (5) NFIP flood zone where property is located (lender must determine, in order to determine if flood insurance requirements are necessary and to use the MPPP),
- (6) Amount of coverage,
- (7) Name and address of mortgage,
- (8) Mortgage loan number,
- (9) Policy number.

b. No elevation certificates will be required as there will be no elevation rating.

c. For more detailed information regarding reporting requirements, see the WYO TRRP Plan.

### 14. Rates (per \$100 of insurance)

Zone	Building	Contents
A Zone: All building/occupancy types.....	\$1.25	\$1.25
V Zone: All building/occupancy types.....	\$3.00	\$3.00

### 15. Policy Declaration Page Notification Requirements

In addition to the routine information, such as, amounts of coverage, deductibles and premiums, that a WYO company may place on the Policy Declarations Page issued to each insured under the NFIP, the following messages are required:

a. This policy is being provided for you as it is required by Federal law as has been mentioned in the previous notices sent to you on this issue. Since your mortgage company has not received proof of flood insurance coverage on your property in response to those notices, we provide this policy at their request.

b. The rates charged for this policy may be considerably higher than those that may be available to you if you contact your local

insurance agent (or the WYO company at \* \* \*)

c. The amounts of insurance coverage provided in this policy may not be sufficient to protect your full equity in the property in the event of a loss.

d. You may contact your local insurance agent (or WYO company at \* \* \*) to replace this policy with a conventionally underwritten Standard Flood Insurance Policy, at any time, and typically at a significant savings in premium.

The WYO company may add other messages to the Declarations Page and make minor editorial modifications to the language of these messages if it believes any are necessary to conform to the style or practices of that WYO company, but any such additional messages or modifications may not change the meaning or intent of the above messages.

Since the amount of underwriting data obtained at the time of policy inception will typically be limited, the extent of any coverage limitations, such as, when replacement coverage is not available or coverage is limited if the building has a basement or is considered an elevated building with an enclosure. It is, therefore, the responsibility of the WYO company to notify the mortgagor/insured of any coverage limitations at the inception of coverage and impose them at the time of the loss adjustment.

### 16. Policy Reformation—Policy Correction

Article VIII F 2. of the Dwelling Policy and Article VII E 2. of the General Property Policy will apply as appropriate.

Examples of circumstances under which reformation or correction might be needed would be:

**Policy Reformation**—The wrong flat rate was applied for the zone in which the property was actually located.

**Policy Correction**—The amount of coverage exceeds the amount available under the NFIP for the type of building occupancy that represents the building insured. In such case, the amount of coverage would have to be adjusted to the amount available and any appropriate premium adjustments made.

### 17. Coverage Basis—ACV or Replacement Cost

There are no changes from the standard practices of the NFIP for these provisions. The coverage basis will depend on the type of occupancy of the building covered and the amount of coverage carried.

### 18. Deductible

Only the Standard Deductible of \$500 is permitted for policies written under the MPPP.

### 19. Expense Constant

There is no change from the standard practice. The Expense Constant in effect at the time the MPPP policy is written must be used.

### 20. Renewability

The MPPP policy is a one-year policy. Any renewal of that policy can occur only following the full notification process spelled out in Addendum #2 that must take place between the lender (or their authorized representative) and the insured/mortgagor, when the insured/mortgagor has failed to provide evidence of obtaining a substitute flood insurance policy.

### 21. Cancellations

a. **Existing Policy**—When the mortgagor provides evidence of a flood insurance policy, from any source, that is currently in effect and has been in effect prior to the effective date of the MPPP policy, the MPPP policy may be cancelled flat with a full refund on premium, provided that the policy in effect is acceptable to the mortgagee. If the existing policy is an NFIP policy (WYO or direct business), the NFIP rules require that one of the NFIP policies must be cancelled. The full premium, including the expense constant will be returned to the payor. The WYO servicing allowance is not earned by the WYO company.

b. **New Flood Insurance Policy**—When the mortgagor/borrower purchases a flood insurance policy, from any source, following notification of the need for the policy, the MPPP policy may be cancelled but on a pro-rata basis. Any premium refund may be calculated with or without the pro rata share of the expense constant, depending on the company's normal business practice.

c. **Other**—The NFIP Insurance Manual rules for Cancellation/Nullification Notices are to be followed, when applicable.

d. See the WYO TRRP Plan for further premium refund instructions.

### 22. Endorsement

An MPPP policy may not be endorsed to convert it directly to a conventionally underwritten SFIP. Rather a new policy application, with a new policy number, must be completed according to the underwriting requirements of the SFIP, as contained in the NFIP Insurance Manual. The MPPP policy may be endorsed to assign it under rules of the NFIP. It may also be endorsed for other reasons such as, increasing coverage.



### 23. Assignment to a Third Party

Current NFIP rules remain unchanged, therefore an MPPP policy may be assigned to another mortgagor or mortgagee. Any such assignment must be through an endorsement, however.

### 24. Article XIII—Restrictions Other Flood Insurance

ARTICLE XIII of the Arrangement is also applicable to the MPPP and, as such, does not allow a company to sell other flood insurance that may be in competition with NFIP coverage. This restriction, however, applies solely to policies providing flood insurance. It also does not apply to insurance policies provided by a WYO company in which flood is only one of several perils provided, or when the flood insurance coverage amounts are in excess of the statutory limits provided under the NFIP or when the coverage itself is of such a nature that it is unavailable under the NFIP, such as blanket portfolio coverage.

### Mortgage Portfolio Protection Program (MPPP) Guidelines and Requirements—Addendum #1

#### Initial Portfolio Review Letter Notification Process

Once it has been determined by the lender/servicer or its representative, that flood insurance is needed on mortgages in their portfolio, and there is no evidence of flood insurance, and it decides to use FIA's MPPP to assist in bringing the lender's portfolio into compliance with flood insurance, then the following notification process must be used.

This process will consist of three initial notification letters. Each letter will contain certain messages, at a minimum in the body of the letter. The lender/servicer (or their authorized representative) may add their own messages, make minor editorial modifications to the messages to conform to the style and practice of the WYO company or lender and structure the letter to their liking, but they may not alter the meaning or intent of the messages listed here for any of the letters.

Each letter will contain mandatory messages on one or more of the following items: (1) The requirements of the Flood Disaster Protection Act of 1973, (2) reminding the insured of the previous letters sent that resulted in the current flood insurance policy, (3) the high premiums on the current policy, (4) potentially inadequate coverage limits, (5) coverage limitations, if any, and (6) the options available to the insured.

#### Initial Notification Letter to Mortgagor

The first letter is to be issued after the review of the lender's portfolio reveals the need for the flood insurance coverage and the absence of it. This letter must contain, at a minimum the following messages:

1. The Flood Disaster Protection Act of 1973, a Federal law, requires that flood insurance be purchased and maintained on mortgage loans for buildings (and their contents, if appropriate) for the life of the loan for buildings located in a Special Flood Hazard Area shown on a map published by FIA. This applies to such loans from lending institutions that are under the jurisdiction of a Federal regulatory agency or instrumentality.

2. We have determined that your property (building), on which we hold the mortgage loan, is located in a SFHA and, therefore, you are required by law to have a policy of flood insurance on that property.

• This letter must then include language advising the mortgagor that in the event they wish to challenge the zone determination, they should provide written factual evidence supporting their challenge obtained from a community official, registered engineer, architect or surveyor, stating the specifics of the location of the building and the reason for their challenge.

• The lender/servicer is reminded that since the Act places the responsibility of determining the flood zone location of each mortgaged property on the lender/servicer, he cannot discharge that responsibility by simply obtaining some form of self certification from the mortgagor. If the lender wishes to change its original determination on the location of the mortgagor's property based upon information submitted by the mortgagor, the lender/servicer must convince itself, after reviewing that submission, that its original determination was in error and make any such change based on that review. He should not simply accept unsubstantiated allegations, from whatever source, as to the building's flood zone location. The ultimate responsibility for making such determinations under the status rests with the mortgagee, not the mortgagor.

3. There is no evidence in your mortgage loan file of your having a flood insurance policy on your property. In case this information is in error, please contact us at

4. If you do not have a flood insurance policy on this property, you may wish to contact your local insurance agency (or WYO company at \* \* \*).

5. If you do not respond within 45 days of this letter, either providing evidence of a flood insurance policy in effect on this property, or requesting that we provide you with such coverage, the necessary flood insurance coverage will be provided for you. In that event, since certain insurance underwriting information about your property that is necessary to determine the appropriate flood insurance rate for your policy would not have been obtained, due to your not responding, the Federal government's Mortgage Portfolio Protection Program's flood insurance rates will have to

be used. These rates may be considered higher than those that could be obtained for you if you respond to this notice.

This letter, or an attachment, must also include such other information as: (1) The name of the lender/servicer, (2) the mortgage loan number, (3) the address of the property in question, (4) the flood zone in which the property has been determined to be located, (5) the amount of flood insurance being required, and (6) coverage limitations (if any).

#### The Second Initial Notification Letter

This letter will be sent 30 days following the first initial notification letter if no response has been received from the mortgagor. It will contain, at a minimum, the following messages:

1. About a month ago you were notified that Federal law requires all mortgages, such as yours, on properties determined to be located in a Special Flood Hazard Area, must be covered by a policy of flood insurance.

2. That letter mentioned that if you did not respond positively within 45 days from that letter, it would be necessary to obtain a policy of flood insurance for you.

3. This is to remind you that since you have not responded to the earlier notice as yet, and if you do not respond within the next fifteen days (or the actual expiration date), flood insurance, as mentioned previously, will be obtained on your property, on your behalf.

4. In the event that you do not respond and the coverage must be obtained as mentioned, the cost of that coverage may be significantly higher than the premium that you could obtain if you were to contact your local insurance agent (or WYO company at \* \* \*).

#### Third and Final Initial Notification Letter

This letter must be sent to the mortgagor accompanying the flood insurance policy Declaration Page.

This letter must be sent as soon after the end of the 45 day notification period as possible, if no positive response has been received to the two previous notification letters. It must contain the following messages, at a minimum:

1. This letter is to inform you that a policy of flood insurance has been obtained on your behalf, to cover the mortgage on your property, as required by the Flood Disaster Protection Act of 1973.

2. You have been notified on two previous occasions explaining the circumstances surrounding your need to have flood insurance coverage and explaining your options, but to date no response has been received.

3. Attached is the flood insurance policy purchased on your behalf and its accompanying Declarations Page that explains: the amount of coverage purchased on your behalf, its cost, some limitations to that coverage, and the options you may still



wish to exercise to obtain similar coverage, but typically at a significantly lower cost.

4. If you purchase another flood insurance policy and notify us, or contact us to request that we purchase a substitute policy under the NFIP for you, we will cancel this policy and issue you a refund for the unearned portion of the premium, if we deem that the other policy is acceptable to satisfy the requirements.

#### **Mortgage Portfolio Protection Program (MPPP) Guidelines and Requirements—Addendum #2**

##### **MPPP Renewal/Expiration Notification Process**

When an MPPP policy has been purchased and the expiration date of that policy is approaching the end of its one year term, and the insured has not requested or produced a substitute policy of flood insurance, the following notification process will be followed.

This process will consist of a total of three renewal MPPP letters. Each letter will contain certain required messages within the body of the letter. The lender/servicer (or their authorized representative) may add their own messages, make minor editorial modifications to the messages to conform to the style and practice of the WYO company or lender and structure the letter to their liking, but they may not alter the meaning or intent of the messages listed here for any of the letters.

Each letter will contain mandatory messages on one or more of the following items: (1) Reminding the insured of the previous letters sent that resulted in the current flood insurance policy that is about to expire; (2) the requirements of the Flood Disaster Protection Act of 1973; (3) the high premiums on the current policy; (4) potentially inadequate coverage limits; (5) coverage limitations, if any; and (6) the options available to the insured.

##### **First MPPP Renewal/Expiration Notice (Letter)**

The first MPPP renewal letter will be sent to the insured/mortgagor at least 45 days prior to the renewal/expiration of the MPPP policy. It will, at a minimum, contain the following messages:

1. This letter is to notify you that the flood insurance policy that was required to be purchased on your property about a year ago is about to expire.

2. When you were originally notified of the need for this coverage, it was explained that the Flood Disaster Protection Act of 1973, a Federal law, requires that flood insurance be purchased and maintained for the life of the loan, on mortgage loans for buildings (and their contents, if appropriate) located in a Special Flood Hazard Area shown on a map

produced by the Federal Emergency Management Agency.

3. The premium on the flood insurance policy currently in effect and written on your behalf, and due to expire, may be considerably higher than would be the case if you had responded to the suggestions contained in the previous notices sent you, recommending that you contact your local insurance agent (or the WYO company) to obtain a conventionally underwritten Standard Flood Insurance Policy.

4. As has been mentioned in previous notices, you may wish to replace this policy with a conventionally underwritten Standard Flood Insurance Policy now, and benefit from rates that potentially are significantly lower than the rates being used with this policy.

5. Failure to respond to this notice within 45 days (or by [date]) will result in this policy being renewed, and at rates that are most likely to be much higher than are otherwise available.

##### **Second MPPP Renewal/Expiration Notice (Letter)**

The second renewal notice will be sent out at least 30 days after the first notice, but at least 15 days prior to expiration of the MPPP policy. It will contain the following messages:

1. About a month ago (or on [date]) you were sent a notice that your flood insurance policy was about to expire.

2. Since you have not responded, you are again being reminded that your flood insurance policy will expire within 15 days (or on [date]).

3. As has been previously mentioned, you have the option of contacting your local insurance agent (or WYO company name and #) to obtain a conventionally underwritten Standard Flood Insurance Policy (SFIP) at potentially significant savings.

4. Failure to respond by [date], submitting evidence that you have purchased or wish to purchase a substitute flood insurance policy or a conventionally underwritten SFIP, will result in the current policy being written again, and most likely at much higher rates than could be obtained with a conventionally underwritten SFIP.

##### **Third MPPP Renewal/Expiration Notices (Letter)**

The third and final notice will be sent out as part of the renewed MPPP policy. The notice containing the following required messages may be sent as a cover letter or an attachment to the Policy Declaration Page and policy itself, or the required messages may be included on the Declaration page that accompanies the renewal policy. It must contain the following messages:

1. Since you have not responded to our previous notices that your flood insurance policy, which is required by Federal law, was about to expire, we have renewed that policy for the next year.

2. As has been previously explained, the Flood Disaster Protection Act of 1973, a Federal law, requires that flood insurance be

purchased and maintained on mortgage loans for buildings (and their contents, if appropriate) for the life of the loan, for property located in a Special Flood Hazard Area shown on a map produced by the Federal Emergency Management Agency.

3. The premium on this flood insurance policy just renewed may be considerably higher than would be the case if you had contacted your local insurance agent (or WYO company at \* \* \*), which you may still do, to obtain a conventionally underwritten Standard Flood Insurance Policy.

4. If you purchase another flood insurance policy and notify us, or contact us to request that we purchase a substitute policy under the NFIP for you, we will cancel this policy and issue you a refund for the unearned portion of the premium, if we deem that the other policy is acceptable to satisfy the requirements.

#### **National Flood Insurance Program Mortgage Portfolio Protection Program (MPPP)—Addendum #3**

##### **Portfolio Review Considerations for Lenders/Servicers Prior to Participating in the MPPP—Questions and Answers**

November 18, 1990.

1. Q. What is the MPPP and who is this Q & A aimed at?

A. WYO companies, lender/servicers participating in the MPPP, Federal regulatory agencies and other interested parties.

2. Q. What is the first step in using the MPPP?

A. The MPPP is only intended to be utilized when the lender (or its representative) has reviewed its portfolio and determined which of the loans are on buildings located in a Special Flood Hazard Area (SFHA), and, therefore, in need of flood insurance.

3. Q. What source of information should the MPPP participant, or their authorized representative, be using in reviewing a loan portfolio, to determine flood zone location of the properties in question?

A. The flood insurance maps published by the Federal Emergency Management Agency (FEMA), augmented by other official documentation available from local officials or other sources, as may be deemed necessary.

The Flood Disaster Protection Act of 1973, which imposes the flood insurance requirement, makes specific reference to "areas identified by the Secretary (since changed to Director [of FEMA]) as an area having special flood hazards". The National Flood Insurance Act of 1968 charged the Federal Insurance Administration with the responsibility of identifying areas which have special flood hazards. Therefore, the official source of information that serves as the



basis for identifying such areas is the maps published by FEMA.

4. Q. What if a source of information other than the FEMA maps is used as the basis for determining the flood zone location of properties?

A. The lender may be risking erroneous determinations, thereby potentially placing the lender in a position of a liability exposure, bad customer relations and/or problems with their Federal regulatory agency or worse.

5. Q. Does it mean that if the system used to make these flood zone determinations is not based on the FEMA maps that it should not be used?

A. Due to the potential for problems as mentioned above, the lender must be careful as to the basis behind the system it uses to make these flood zone determinations. Also, since the lender must keep evidence of the determination in every mortgage file, if that evidence doesn't reflect the map panel used to make the determination, the lender may have difficulty proving to their Federal regulatory agency, or in court if the need arose, that the lender is complying with the law.

6. Q. What flood zone determination information should the lenders keep in each mortgagor's file to indicate evidence of compliance?

A. Lenders should keep, at a minimum, the ten digit flood insurance map panel number, suffix and date. The first six digits of that number represent an identification code for the community. Since most flood insurance maps contain multiple pages or panels, the full ten digit number is necessary in order for an examiner (or anyone else) to be able to know which panel was used. The community number (six digit) alone would not be sufficient when the ten digit number exists.

7. Q. Are all FEMA flood insurance maps ten digit maps?

A. No. Some are in the old format, are 11" x 17" and have only the single six digit identifying number and date, with possible suffix for the entire map regardless of the number of pages or panels. The great bulk of the maps published since the mid 1970's in which mortgage activity occurs, however, have been converted to this ten digit format.

8. Q. What version of the flood map should be used in conjunction with the MPPP portfolio review?

A. The provisions of the Flood Disaster Protection Act of 1973 require that the flood zone determination be made at the time of, and in conjunction with, the loan origination or any new making, such as, a home equity loan, second mortgage, etc.

9. Q. Doesn't the fact that the MPPP was designed to assist lenders/servicers in bringing their portfolios into compliance with flood insurance requirements mean that they will be dealing with loans that can range from being very new to being many years old, and that the maps that may have been in effect at the time of the loan origination might not be readily available now.

A. Yes. However, as a practical matter, the users of the MPPP will probably use the flood maps and related information that they have available to them at the time of the review which reflect current information but not that which was in effect at the time of the loan origination.

10. Q. Could the use of current flood maps and related flood zone information in conjunction with portfolio review, cause any problems?

A. That may depend on a number of factors, such as:

- How many loans in the portfolio are older than the maps being used to make the current determination, or
- Whether the map information source being used for the review reflects a different flood zone than the one in effect at the time of loan origination.
- Whether the mortgagor raises the issue that the map being used to make the current flood zone determination was not the one in effect at the time of loan origination.

11. Q. What if only a few loans in the portfolio are older than the maps being used today to make the determination?

A. Then the issue may not surface.

12. Q. Might a borrower challenge the notice it received from the lender/servicer (or its representative) using the MPPP and if so, what would be the reason?

A. Yes, there could be several reasons such as:

- The map used to make the determination is different from the one in effect at the time of the loan origination (which was either non-existent or showed the property outside the SFHA).

• The loan origination date preceded 3/1/1974 (the effective date of the 1973 Act), or the initial flood insurance map for the community.

• The language in the mortgagor's contract does not mention a flood insurance requirement.

13. Q. What should a lender/servicer do if challenged on these issues?

A. The lender has different options to consider depending on the basis for the challenge and should consider the following:

Challenge(s) based on:

- The date of the map used to make the determination—If the date of the

mortgage precedes the date of the map used, the lender will have to decide whether to determine which version of the map was in effect at the time of origination and attempt to obtain a copy of that map, or drop the requirement on that mortgagor. The lender could also, following a review of the language of that mortgagor's mortgage contract, determine whether it (lender) had been granted sufficient authority by that language to impose flood insurance on that mortgage at any time during the life of that contract.

• The date of mortgage precedes the 1973 Act and/or date of map—If the mortgage contract provides the lender with the authority to impose broad-based hazard insurance requirements at any time during the life of the loan, then the lender must decide whether it wishes to invoke this authority regardless of the date of the mortgage/map date.

• The mortgage contract language doesn't mention flood insurance—Many mortgage contracts written prior to the late 1970s contained language that either mentioned property insurance requirements by referring to fire and extended coverage (windstorm & hail) or mentioned fire and other hazards. Since most of this language preceded the availability of flood insurance, it typically meant the windstorm hazard, but may not be limited to just that peril. It was many lenders' intent, in those days, to give themselves the option of imposing other forms of hazard insurance that might become available and/or be deemed necessary to protect the interests of the mortgagee (and mortgagor) from that peril. If the lender believes that the language in the mortgage contract of the mortgagor raising the issue is sufficiently broad to allow it to impose the flood insurance requirement at any time during the life of that mortgage contract, then it may wish to do so, without regard to whether or not there was a flood insurance map in effect at the time of loan origination.

Lender/servicers are advised to consider these issues and decide in advance, what response(s) it will provide its mortgagors if they present these issues.

14. Q. Once the lender/servicer's portfolio has been reviewed and determinations have been made as to which properties need flood insurance, is there anything critical that the lender (or its representative) should consider before beginning the process of mailing the initial notices to their mortgagors?

A. Yes, how the mailing will be handled and the results of that mailing. There is a strong likelihood that once the mailings begin, that a certain



percentage of the mortgagors' recipients of those notices will challenge the notices, as mentioned earlier. Some of those challenges will be directed, in one way or another, to the lender/servicer, regardless of any instructions in the notices. The lender should therefore determine at the outset whether it wants the notices to be sent all at once, or metered out so many at a time. The larger the volume, the more consideration to the metering approach that should be given.

Also, the lender needs to consider how it wants the review of its portfolio carried out. If the results of the review are provided to the lender all at the same time and the lender decides to send the notices to the mortgagors so many at a time, it may be exposing itself to additional liability. This could occur since the lender was aware of all the mortgages in its portfolio that needed flood insurance, but acted on only a certain number at a time. The lender, therefore, needs to consider having the portfolio review carried out in such a fashion that the results of each portion of that review are made available to the lender as soon as they are available from the party conducting the review, and are acted upon as soon as possible thereafter.

#### Addendum #4—National Flood Insurance Program Mortgage Portfolio Protection Program (MPPP) Questions and Answers

December 14, 1990.

1. Q. What is the MPPP and what is it designed to do?

A. The MPPP is a tool made available to the lending and mortgage servicing industries that provides them with the capability to write flood insurance policies quicker and easier that will assist them with their efforts to bring their portfolios into compliance with flood insurance requirements.

2. Q. Is this available to lenders for all their loans?

A. No! It may only be used in conjunction loan portfolios. It may not be used as a compliance vehicle for loan originations.

3. Q. Is the MPPP mandatory for lenders/servicers?

A. No! It is voluntary, but lenders/servicers that believe their loan portfolios may not in compliance with flood insurance requirements are strongly encouraged to use it if they believe it could be helpful.

Q. What are the benefits of the MPPP?

A. The specific benefits will vary with the category of participant as follows:

- For lenders/servicers.

- Portfolios can be brought into compliance satisfying the law and regulators.

- Reduce, limit or eliminate certain potential liability.

- Protect equity (lender/servicer, borrower).

- For WYO companies.

- Increased policy sales/fees.

- Increase lender/servicer client base.

- For insurance agents.

- Increased policy sales.

5. Q. Is it possible for WYO companies and insurance agents to benefit from the MPPP even if they don't directly participate in it?

A. Yes! Property insurance (fire and auto) is already being sold by insurance agents to many of these same borrowers because lenders require it in conjunction with home mortgages and auto loans. As a result, many agents already have established business relationships with their local lenders. These agents could alert these lenders to the availability of the MPPP and advise them as to how to proceed even if the agent was not going to directly participate.

At the same time the agent could offer to assist the lender with determining the flood zone location of the addresses of all new mortgage loan applications for that lender and ask in return, for the opportunity to write all the flood insurance policies on those properties that are determined to need it. The notices that will be sent to the borrowers will generate inquiries and sales.

6. Q. How will flood policies actually be sold under the MPPP?

A. Policies will be written through the insurance companies participating in FIA's Write Your Own (WYO) Program.

7. Q. Will all the insurance companies participating in the WYO Program be writing policies under the MPPP?

A. Any WYO company may write policies under the MPPP, but only those that traditionally have dealt with the lending industry are expected to participate in this Program. Any such company that does wish to participate must agree in writing to comply with the requirements of the MPPP.

8. Q. Will FIA maintain and publish a list of the WYO companies that participate in the MPPP?

A. Yes! Such a list will be developed and both modified and republished as needed.

9. Q. What is the first thing a lender/servicer should do if it wishes to utilize the MPPP?

A. The lender must review its loan portfolio and determine which of the properties are located in Special Flood Hazard Areas (SFHA).

10. Q. When a lender/servicer decides to utilize the MPPP, must they use the MPPP to service their portfolio all at the same time?

A. Not Lenders/servicers should carefully analyze the pros and cons of phasing in their portfolio compliance effort. (See the Q & A that FIA has developed on "Portfolio Review Considerations")

11. Q. Is use of the MPPP limited to only those properties located in SFHAs?

A. Yes!

12. Q. What will happen if a policy is written through the MPPP, but the property is not located in a SFHA?

A. The policy would be honored in the event of a claim. It would then have to be cancelled, re-written and re-rated in the normal way with any premium overpayment refunded. The effective date of the policy written in the normal way would be the same as that of the now cancelled MPPP. The loss, however, should be reported under the new policy number.

13. Q. What differences are there between a flood policy sold under the traditional flood insurance program and one under the MPPP?

A. The actual policy and coverage are the same, but there are differences primarily in the areas of:

- Rates,
- A letter notification process to the borrowers,
- The underwriting information necessary.

14. Q. What are the rate differences?

A. The rates under the MPPP are, on the average, several times those used under the traditional flood insurance program.

15. Q. Why are the MPPP rates so high?

A. Due to the fact that the borrower did not respond to the notices sent, key information necessary to underwrite the risk is not available. Therefore it is necessary to assume that those properties have a very high risk and the rates charged reflect that risk.

16. Q. Does the borrower have any option in avoiding the MPPP policy with its higher cost?

A. Yes! They can simply contact their local insurance agent, obtain a conventionally underwritten flood insurance policy and present it to their lender/servicer.

17. Q. If a borrower pays off the mortgage loan can the MPPP then be cancelled?

A. Yes, but any refund due the borrower will be paid on a pro-rata basis.

18. Q. If the borrower or lender/servicer sell or assign the mortgage to



another borrower or lender/servicer, can the MPPP policy be assigned?

A. Yes! The Standard Flood Insurance Policy language allows for the assignment of all NFIP policies. Any such assignment of an NFIP policy must be done by way of an endorsement.

19. Q. Must a WYO company participating in the MPPP maintain copies of all its MPPP documents?

A. The companies are responsible for the data on each Application Form, in keeping with its normal practices. Although some of the data beyond that required, does not have to be reported, the companies are still responsible for it. The WYO companies may use their normal business practices in determining which form they will use to retain data, forms or other required information.

20. Q. Who initiates the letter notification process required by the MPPP?

A. The letter notification process is one of the requirements of the MPPP. The FIA requires any WYO company that wishes to participate in the MPPP to agree to comply with all those requirements. However, lenders/servicers differ on how their force placed hazard insurance notices are sent to their borrowers. Some lenders insist on sending such notices directly. Others let the insurance company, with whom the force placed policies are written, send out the notices. Since the MPPP is a part of the NFIP, then any policies written through the MPPP must have been written in compliance with all of its requirements, regardless of the entity that actually sends the notices.

21. Q. Must the lender or WYO company maintain copies of the notification letters?

A. The WYO company is responsible for assuring that the letters are sent regardless of whether they or the lender actually sends them. The WYO company must maintain some form of evidence that the letters are being sent. It will be the WYO company's decision as to the form the evidence takes, such as, paper copies, micro fiche, computer images or a record of the mortgagor addresses to whom the letters were sent with an indication as to the date when those mortgagors were notified.

22. Q. What does a WYO company do if all of the information FIA requires on the DEC page won't fit on that page?

A. The company may wish to include some of that information on the DEC page and some on an "endorsement". In such a case it should indicate an endorsement number on the DEC page.

23. Q. Does a policy declarations (DEC) page have to be issued each time an MPPP policy is renewed?

A. Yes, and it must accompany the third renewal notification letter.

24. Q. When an MPPP is renewed, can the same policy number that was assigned to the original MPPP policy be used?

A. Yes!

25. Q. Will the rating credits that will be available in a community participating in the Community Rating System (CRS) apply to a policy written under the MPPP?

A. No!

26. Q. The MPPP requirements call for the full map panel number and date to be obtained. What does the WYO company do with that information since the NFIP Application Form in use today doesn't contain enough space to even capture all this information?

A. The WYO companies have never been required to use NFIP forms in the WYO program, but have been free to develop their own forms. They are, however, responsible for all required data, some of which must be reported and some of which isn't, but must be kept in the company files. The data requirements for the MPPP follow the same conditions. The full map panel number for that panel used to determine flood zone location and rate the policy is the one that must be captured and sense maintained. The majority of the maps FIA has published for many years have the ten digit number, suffix and date for each panel. Some of the maps still in use have only the six digit community number and date. The six digit community number cannot be used when the ten digit number exists. FIA will revise its Application form in the future to provide more space for this item.

27. Q. The MPPP requirements state that certain data, that is not normally reported under the WYO program, such as mailing addresses and mortgagee information will be required to be reported. Are there more specifics on how that is supposed to work?

A. How that information will have to be reported and how often, is being developed and will be provided to the WYO companies when available, and in sufficient time to allow for any necessary adjustments to their operations.

28. Q. Will the MPPP rates be affected by the rate and other changes FIA is proposing for later in FY 1991?

A. The MPPP rates themselves will most likely not be affected, but the expense constant in effect at the time a policy is written must be used and any other fee in effect, such as the proposed policy service fee, must also be applied.

29. Q. Is contents coverage under the MPPP optional?

A. Yes! The lender must decide whether or not it will require it as part of the MPPP policy.

30. Q. What is meant by the term "coverage limitations" that is mentioned in the MPPP materials?

A. Primarily ACV coverage instead of Replacement Cost coverage, when appropriate. It could also apply, however, to the situation where only an amount to cover the loan balance is purchased which may be insufficient to cover the full insurable value of the property. The WYO company will have to determine what limitations may apply depending on the decisions of the lender/servicer as to how it wants to use the MPPP and the amount of underwriting information obtained.

31. Q. The notification process contains standards for the letters being mailed and the MPPP policy being written such as 45, 30, and 15 days. Must these standards be strictly adhered to?

A. There are a number of standards similar to this in the NFIP and some limited flexibility has been built into the actual implementation process through the underwriting review process that FIA uses with the companies. FIA is preparing modifications of that review process to incorporate the MPPP criteria and will attempt to incorporate such flexibility into these changes.

32. Q. May WYO companies, under the requirements of the MPPP, use any portion of the MPPP fee they retain, for any purpose other than as a commission to an insurance agent or agency for their writing the policy, such as for flood zone determinations or the tracking of loans?

A. No!

#### **The National Flood Insurance Program's Mortgage Portfolio Protection Program Implementation Package; Addendum #5—Receipt for Materials and Agreement to Adhere to Criteria and Requirements**

The Federal Insurance Administration (FIA) has published a package of materials for implementing their Mortgage Portfolio Protection Program (MPPP) on 1/1/91. This package contains the Criteria and Requirements that the insurance companies participating in FIA's MPPP through FIA's Write Your Own (WYO) program and any lending institutions and/or mortgage servicing or similar companies must adhere to when participating in the MPPP.

The Implementation Package contains the following:

- A cover letter from the FIA Administrator to the WYO companies and other users of the MPPP.



• A Guide for WYO Companies, Lending Institutions, Mortgage Servicers and Other Potential Users.

• Addendum #1—Initial Portfolio Review Letter Notification Process.

• Addendum #2—Portfolio Review Renewal Letter Notification Process.

• Addendum #3—Portfolio Considerations Q & A.

• Addendum #4—MPPP Q & A.

• Addendum #5—"Receipt for Materials and Agreement to Adhere to Criteria and Requirements (this document).

This "Receipt and Agreement" together with the Package referenced above must be presented by any WYO company that offers the MPPP to a

lender/servicer and the lender/servicer that agrees to participate in the MPPP to assist in bringing its portfolio into compliance with flood insurance requirements must sign this "Receipt and Agreement" as evidence of having actually received the Package and agreeing to comply with the criteria and requirements contained therein.

This acknowledges that the package of implementation materials for the Federal Insurance Administration's (FIA) Mortgage Portfolio Protection Program (MPPP) has been received.

(Name of WYO company representative providing the Package)

(Name of lender/mortgage servicer's representative receiving the Package)

(Name of WYO company being represented)

(Name of lender/mortgage servicer being represented)

(Date of receipt)

(Date of receipt)

**Note:** WYO companies are required to keep a copy of this Receipt in their files for each lender/mortgage servicer to which they provide services under the MPPP. Lenders/mortgage servicers may wish to do the same.

# WRITE YOUR OWN COMPANIES WHO HAVE AGREED TO PARTICIPATE IN THE NATIONAL FLOOD INSURANCE PROGRAM MORTGAGE PORTFOLIO PROTECTION PROGRAM

Company	Principal Coordinator
American Bankers Insurance Company of Florida, 11222 Quail Roost Drive, Miami, FL 33157.....	Christine M. Elwood, Director, Flood Operations, (305) 253-2244 X5321.
American Loyalty Insurance Company, 555 Offcenter Place, Gahanna, OH 43230-5813 .....	Wayne Moultrie, Assistant Vice President, (614) 251-1497.
American Modern Home Insurance Company, 537 E. Pete Rose Way, P.O. Box 85323, Cincinnati, OH 45201.	Joseph Daniel Caskey, Vice President, (513) 721-3010 X254.
American Road Insurance Company, FMCC Building—room 2080, One American Road, Dearborn, MI 48121.	Jack Gillespie, Product Manager, (313) 322-3453.
Bankers Insurance Company, 10051 5th Street North, P.O. Box 15707, St. Petersburg, FL 33702....	Kathleen Batson, Vice President, (813) 579-4000.
Bankers & Shippers Insurance Company, 3060 South Church Street, Burlington, NC 27215 .....	Barbara Solomon Papa, Sales Manager, (919) 538-4000 x4136, (305) 431-3385.
Colonial Penn Insurance Company, Property/Casualty Accounting & Reporting, 11 Penn Center Plaza, 14th floor, Philadelphia, PA 19181.	Mary Ellen Ford, Product Manager, (215) 988-5086.
Consolidated Insurance Group, Inc., (American Centennial Insurance Co.), (Wesco Insurance Company), 1100 Carr Road, Wilmington, DE 19809.	Kathleen W. Koch, Director-FACS Center, (302) 792-5685.
Empire Fire & Marine Insurance Company, 1624 Douglas Street, Omaha, NE 68102 .....	Richard F. Williams, President, (402) 341-0135.
First Colonial Insurance Company, 11 East Forsyth Street, Jacksonville, FL 32202.....	Howard D. Taylor, Vice President, (904) 359-2633.
Florida Fire & Casualty Insurance Co., 800 Corporate Drive, suite 700, Ft. Lauderdale, FL 33334....	Dianne Bovender, Vice President, (305) 776-3330.
Great Pacific Insurance Company, 1250 Bayhill Drive, suite 100, San Bruno, CA 94066 .....	Jim Wunderlich, Vice President, (415) 872-6676.
Independent Fire Insurance Company, One Independent Drive, Jacksonville, FL 32276 .....	Kay McNeill, Supervisor, Flood Administration, (904) 632-8480.
Island Insurance Company, Ltd., 1022 Bethel Street, P.O. Box 1520, Honolulu, HI 96813 .....	Ronald K. Toguchi, Assistant Vice President, (808) 531-1311.
Minnesota Mutual Fire & Casualty, 10225 Yellow Circle Drive, Minnetonka, MN 55343 .....	Kevin DeVann, Counsel & Assistant Sec., (612) 933-5033.
Omaha Property and Casualty Company, 3102 Farnam Street, Omaha, NE 68131 .....	Ted Johnson, Manager Special Products, (402) 342-3326.
Pan American Insurance Company, Chardon Avenue, Corner Caesar Gonzalez, Hato Rey, PR 00918.	Raul Rosario, Assistant Supervisor, (809) 250-6500.
Patrons Mutual Insurance of Conn., 769 Hebron Avenue, P.O. Box 6517, Glastonbury, CT 06033-6517.	Alden A. Ives, President, (203) 633-4678.
Redland Insurance Company, 535 West Broadway, P.O. Box 1574, Council Bluffs, IA 51502 .....	Larry W. Palmer, Director, Flood Insurance Program, (712) 325-1545.
Regency Insurance Company, 217 E Hallandale Beach Blvd., Hallandale, FL 33009-0190 .....	Wendy Iglesias, Underwriting Manager, (305) 456-4590.
Unisun Insurance Company, #1 South Park Circle, P.O. Box 31190, Charleston, SC 29417-1190 ....	James A. Brazill, V.P. Underwriting, (803) 571-0510.
U.S. Security Insurance Company, 3915 Biscayne Boulevard, Miami, FL 33137 .....	Lori Scaramellino, Product Manager-Flood, (305) 576-1115 X317.

[FR Doc. 91-4872 Filed 2-28-91; 8:45 am]

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# Federal Register

Friday  
March 1, 1991

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## Part VI

### Department of Housing and Urban Development

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#### Office of the Secretary

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**Notice of Fund Availability for  
Historically Black Colleges and  
Universities To Provide Technical  
Assistance to Eligible Community  
Development Block Grant Communities;  
Notice**



# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## Office of the Secretary

[Docket No. N-91-3208; FR-2838-N-03]

### NOFA for Historically Black Colleges and Universities To Provide Technical Assistance to Eligible Community Development Block Grant (CDBG) Communities

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice of fund availability (NOFA).

**DATES:** An application for funding under this notice will be due no earlier than April 1, 1991. The date for receipt of applications will be specified in the application kit.

**SUMMARY:** The Department of Housing and Urban Development invites applications from Historically Black Colleges and Universities (HBCUs) for funding programs to provide technical assistance to help cities use their CDBG funds more effectively. In the body of this document is information concerning the purpose of the NOFA and information regarding eligibility, available amounts, selection criteria and information processing, including how to apply and how selections will be made. Applicant HBCUs should have academic programs in community development or related fields. A variety of technical assistance approaches will be funded, including the development of CDBG economic development projects; assisting small cities in preparing CDBG applications; providing on-site peer-to-peer technical assistance to cities to improve the management of their CDBG programs; and conducting workshops to aid local governments in more effectively utilizing their CDBG funds.

**FOR FURTHER INFORMATION CONTACT:** Karen Williams, Program Support Division, Office of Procurement and Contracts, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-1182. Applications may be requested at the same address after publication of this notice. The TDD number for the hearing impaired is (202) 708-2565. (These are not toll-free numbers.)

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under

the Paperwork Reduction Act of 1980. The control number for information collection described in this document is 2535-0084.

#### Purpose and Substantive Description

##### I. Authority

This notice solicits cooperative agreement applications from Historically Black Colleges and Universities (HBCUs) which have academic programs in community development, economic development, community planning, community management or related fields. The purpose of the funding is to provide assistance to help cities use their CDBG funds more effectively and to increase HBCU participation in federal programs in accordance with Executive Order 12677. The source of the assistance is the CDBG Technical Assistance program implemented by the Department's regulations at 24 CFR 570.400 and 570.402.

The goal of this technical assistance is to aid communities in using their CDBG funds more effectively. Related objectives are:

- To increase the capacity of eligible communities in the administration, planning and implementation of their CDBG programs.
- To assist in the development of CDBG-funded economic development projects.
- To provide on-site peer-to-peer assistance to local CDBG officials in improving the effectiveness and management of their local CDBG programs.
- To conduct technical assistance workshops in requested subject areas (e.g. HUD CDBG-funded Small and Minority Business Loan Programs, CDBG-funded State Enterprise Zones Programs, CDBG activities designed to affirmatively further fair housing, and CDBG-funded Rehabilitation Programs).

##### II. Allocation Amounts

Approximately \$1.5 million is available for cooperative agreements. HUD anticipates funding up to 15 colleges and universities for approximately \$100,000 each.

##### III. Eligibility

To be eligible to participate in this competition, an applicant must meet the following criteria as listed in 34 CFR 608.2:

- (1) Be an historically black college or university;
- (2) Have been established before 1964;
- (3) Have a principal mission that was and is, the education of Black Americans; and
- (4) Be, and have been, an HBCU for five academic years preceding the academic year for which it seeks a cooperative agreement.

In addition, an applicant must:

- (1) Have an academic program in community development, economic

development, community planning, community management, or related fields.

#### IV. Selection Criteria/Ranking Factors

The following factors will be used by the Department to evaluate applications. Each application must contain sufficient technical information to be reviewed for its technical merit. The score of each factor will be based on the qualitative and quantitative aspects demonstrated in each area of the response.

The factors and corresponding weights are as follows (100 total points):

1. The probable effectiveness of the applicant's approach in meeting the CDBG-related needs of localities and in accomplishing the application's overall objectives. (25 points as allocated below)
    - a. The extent to which the application clearly demonstrates an understanding of the CDBG programs and CDBG-related needs of communities in the HBCU's geographic area. (10 points)
    - b. The extent to which the HBCU describes clear, feasible, CDBG-relevant and appropriate criteria for selecting communities to be assisted. (3 points)
    - c. The extent to which the applicant presents a clear and feasible plan for:
      - Notifying communities of the availability of the assistance and the criteria to be used to select communities to be assisted (2 points);
      - Obtaining designation as a technical assistance provider to the community's CDBG program by the chief executive officer of each community to be assisted (2 points);
      - Ensuring adequate liaison with the State CDBG Program Manager responsible for the HBCU's geographic area (5 points); and
      - Ensuring that the small cities in its area are targeted by, or having plans to better the position of the small cities to be targeted by, the State to receive CDBG funds. (3 points)
  2. Soundness of approach based on the extent to which the application identifies techniques or systems that can significantly impact on the key problem(s) identified. (25 points as allocated below)
    - a. The extent to which the application demonstrates a congruent relationship between the CDBG-related needs of communities in the HBCU's geographic area and the tasks it proposes to undertake to meet those needs. (12 points)
    - b. The extent to which the application provides a feasible, technically sound and cost effective plan for designing, organizing and carrying out the HBCU's chosen approach and proposed tasks. (13 points)
    3. Methodology for transfer of successful technical assistance techniques to other HBCU's which are potential assistance providers. (10 points)
- The extent to which the application demonstrates a feasible plan for identifying and transferring technical assistance techniques and approaches which were most successful and appropriate for transference to other HBCU assistance providers.



4. Organizational and management plan reflecting a rational project management system. (15 points as allocated below)

a. Clear delineation in the application of staff responsibilities within the project and clear allocation of accountability for all work required. (5 points)

b. A work plan which presents a clear and feasible schedule for conducting all project tasks. (5 points)

c. Reasonableness and adequacy of the planned budget, as reflected in the budget-by-task and supporting rationale and justification for the budget. (5 points)

5. HBCU qualifications based on present and past relevant experience and the competence of key personnel assigned to the project. (15 points as allocated below)

a. Capabilities (6 points)

—The HBCU's overall capabilities and recent and past experience in providing or potential to provide technical assistance in community development, economic development, community planning, community management, or related fields as evidenced by the nature and scope of the HBCU's programs in these areas, the staff size, capabilities, and past contracts of the department or organization in the HBCU which is to provide the proposed technical assistance.

b. Staffing

—Project Director: The extent to which the proposed project director has relevant experience in managing community development or related projects. (5 points)

—Project staff: The extent to which the staff members proposed for this project have backgrounds suitable for the CDBG technical assistance effort based upon prior experience in projects of a comparable nature. (4 points)

6. Potential for assistance activities being sustained beyond the period of the cooperative agreement. (10 points) The extent to which the HBCU demonstrates that it has a potentially successful plan for sustaining assistance activities beyond the period of the agreement with CDBG and CDBG-eligible communities in its geographic area.

#### Application Process

Requests for the application kit and completed applications should be submitted to: Department of Housing and Urban Development, Office of Procurement and Contracts, Program Support Division, Attention: Karen Williams, 451 7th Seventh Street, SW, room 5252, Washington, DC 20410.

No more than one application per HBCU will be accepted by HUD.

An application for funding under this notice will be due no earlier than 30 days after publication of this notice. The date for receipt of applications will be specified in the application kit.

#### Checklist of Application Submission Requirements

The application must include the following elements:

1. A Standard Form 424 signed by the Chief Executive Officer of the HBCU;

2. A description of the proposed method of notifying communities in the HBCU's geographic area (within a 150 mile radius of the HBCU) of the availability of the assistance and a description of the specific criteria to be used (required by the HUD Reform Act of 1989) to select communities to be assisted by the HBCU. One selection criterion required by HUD is that each assisted community must have committed or plans to commit or apply for CDBG funds related to the technical assistance the HBCU will provide.

3. A description of how the HBCU proposes to obtain designation as a technical assistance provider for the community's CDBG program by the chief executive officer of each unit of general local government the HBCU will assist. (Obtaining the designation as a technical assistance provider is a prerequisite to an HBCU's eligibility to provide services to a community.)

4. A description of the need for the technical assistance the HBCU proposes to provide and how the need for the technical assistance was determined. It also should discuss the problems to be surmounted in conducting the technical assistance.

5. A description of how the proposed technical assistance could improve the CDBG programs of communities in its geographic area, including a description of the specific types of CDBG activities to be assisted and the extent to which communities in its area are spending or plan to spend or apply for CDBG funds for such activities.

6. A description of the methods the HBCU will use to ensure adequate liaison with the State program officials responsible for the CDBG Small Cities program and the methods it proposes to use to aid small cities in the HBCU's geographic area in obtaining State CDBG funds.

7. A task-by-task description of the specific activities to be undertaken, a schedule for undertaking the activities, a proposed budget clearly showing how HUD technical assistance funds and other project funds would be used, the amount of HUD funds budgeted for each task, the basis for the estimates, and a staffing chart by person-by-task.

8. A description of the plans for identifying the most successful technical assistance techniques and approaches used during the project and for transferring them to other HBCU assistance providers.

9. A description of the department or organization within the HBCU which will provide the assistance, including a description of its structure, staff size and

staff capabilities, annual budget, current and past contracts (within the last three years) with public and private organizations, and recent experience in addressing issues involving technical assistance and local CDBG programs. Any previously or currently funded efforts such as Minority Business Development Centers (MBDC), Small Business Development Centers (SBDC), Economic Development Administration (EDA) University Center Projects, etc., or related activities funded by the Small Business Administration (SBA), Department of Commerce, etc., should be cited. It should identify the nature and scope of the HBCU's academic programs in community development, economic development, community planning, community management, or related fields. It also should identify and similarly describe any proposed sub-contractors or consultants.

10. A description of the backgrounds of key personnel to be involved in the project, including relevant prior experience in managing, planning or carrying out community development or related projects.

11. A description of the HBCU's plan for sustaining assistance activities beyond the period of the cooperative agreement.

A complete checklist of all steps that must be followed by an applicant and all exhibits, including certifications, that an applicant is required to submit will be included in the application kit.

#### Corrections to Deficient Applications

Applicants will be given an opportunity to cure nonsubstantive, technical deficiencies in their applications. HUD will notify an applicant in writing, shortly after the expiration of the application deadline, of any technical deficiencies in the application. The applicant must submit corrections within 14 calendar days from the date of HUD's deficiency notification or the application will not be considered.

Technical deficiencies that may be cured relate to items that are not necessary for HUD review under the selection criteria/ranking factors. Material cannot be submitted, after the application due date has passed, to improve the substantive quality of the proposal.

#### Other Matters

##### Lobbying Activities—Prohibition and Disclosure

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section



319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal year 1990 (Pub. L. 100-121) and the implementing regulations at 55 FR 6736 (February 26, 1990). These authorities generally prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Additionally, a recipient must file a disclosure if it has made or agreed to make any payment with nonappropriated funds that would be prohibited if paid with appropriated funds. The certification and full text of the clause will be contained in the application kit.

#### *Executive Order 12606, The Family*

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this NOFA will not have potential

significant impact on family formation maintenance, and general well being and, therefore, is not subject to review under the order. The NOFA funds HBCUs to provide technical assistance to help cities use their CDBG funds more effectively. Any family impact would be incidental and indirect.

#### *Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The NOFA will provide funding to HBCUs to provide technical assistance to cities, and in this way decentralizes the source of technical assistance away from the Federal government, but its impact is limited to a single program.

#### *Environmental Impact*

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR 50.20

(b) of the HUD Regulations, the policies and procedures in this document relate only to the provision of technical assistance therefore are categorically excluded from NEPA requirements.

#### *Drug-Free Workplace Certification*

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each potential grantee must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F. The Drug Free Workplace certification and clause will be contained in the application kit.

Catalog of Federal Domestic Assistance (CFDA) No. 14.227

Authority: Section 107(b)(4), Housing and Community Development Act of 1974, as amended, and 24 CFR 570.400 and 570.402, Technical Assistance Program Regulation.

Date: February 14, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91-4831 Filed 2-28-91; 8:45 am]

BILLING CODE 4210-32-M



# Federal Register

Friday  
March 1, 1991

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## Part VII

### Environmental Protection Agency

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**Prince William Sound and Gulf of Alaska;  
Draft 1991 Restoration Work Plan; Notice**



# ENVIRONMENTAL PROTECTION AGENCY

[WH-FRL-3910-8]

## Prince William Sound and Gulf of Alaska Restoration

**AGENCY:** Environmental Protection Agency and the Alaska Department of Law.

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency, acting to coordinate restoration on behalf of the Federal Trustees (the U.S. Departments of Interior and Agriculture and the National Oceanic and Atmospheric Administration), and with the Alaska State Trustees (the Alaska Attorney General as the lead State Trustee and the Alaska Departments of Fish and Game and Environmental Conservation) are publishing here (1) a discussion of the overall process the State and Federal governments intend to follow to enhance and expedite the recovery of Prince William Sound, lower Cook Inlet, and the Gulf of Alaska from the *Exxon Valdez* oil spill and (2) a draft 1991 Restoration Work Plan comprised of restoration planning and implementation activities being considered by the Trustees. The public is invited to comment and to suggest other activities that should be considered by the Trustees in preparing this draft 1991 Restoration Work Plan. Notice of intent to take this action was published in the *Federal Register* in November (55 FR 48160, November 19, 1990).

**DATES:** The Federal and State of Alaska governments will accept comments through April 15, 1991.

**ADDRESSES:** Written comments should be submitted to: Secretary, Restoration Planning Work Group, Oil Spill Restoration Planning Office, 437 "E" Street, Suite 301, Anchorage, Alaska 99501, Phone (907) 271-2461.

**FOR FURTHER INFORMATION CONTACT:** Susan MacMullin at (202) 245-4373.

### SUPPLEMENTARY INFORMATION:

#### I. Introduction

##### Purpose

The U.S. Departments of Agriculture (DOA) and the Interior (DOI), the National Oceanic & Atmospheric Administration (NOAA), and the Alaska Attorney General, the Alaska Departments of Fish and Game and Environmental Conservation, (hereafter referred to as "the Trustees") and the Environmental Protection Agency (EPA) desire to implement restoration

activities in the areas affected by the *Exxon Valdez* oil spill as soon as practicable. This Notice contains a draft 1991 Restoration Work Plan comprised of restoration planning and initial implementation activities under consideration by the Trustee Council, an Alaska-based intergovernmental group charged by the Trustees with managing the natural resources damage assessment and restoration program for 1991. Restoration activities in 1991 and subsequent years will be undertaken as appropriate, based on the Trustees' increasing understanding of resource injuries and other relevant considerations. Implementation activities in 1991 will not foreclose future restoration options and are not intended to be a complete or comprehensive restoration program. Implementation of all restoration activities will follow appropriate procedures for compliance with applicable State and Federal laws and regulations. The President of the United States has designated EPA to coordinate, on behalf of the Federal Trustees, the long-term restoration of Prince William Sound and other areas affected by the *Exxon Valdez* oil spill. Accordingly, the EPA Administrator is issuing this document as an action under the Clean Water Act and the Alaska Attorney General is working in concert with the EPA under State authority.

Although preparation of the draft 1991 Restoration Work Plan is not required under the Clean Water Act or the laws of Alaska, the Trustees and EPA have chosen to present this document to obtain public comment and to invite suggestions about other restoration activities that should be considered by the State and Federal governments. The public is also invited to comment on the overall process the governments intend to follow in enhancing environmental recovery in Prince William Sound, lower Cook Inlet, and the Gulf of Alaska and achieving restoration of affected resources and services after the *Exxon Valdez* oil spill.

The Trustees expect to complete the assessment of damages, determine liability, and collect funds from the responsible parties before they prepare a final Restoration Plan. Although the Trustees wish to resolve damage assessment and liability issues as promptly as possible, it is not possible to predict when this will occur. Considering this uncertainty, in cases where the nature of the resource injury, loss or destruction [hereinafter referred to as "injury"] is reasonably clear, and where no alternatives would be foreclosed, it may be desirable to begin implementation of certain restoration

activities prior to a final Restoration Plan. As a result, the Trustees are considering implementation in 1991 of activities described in section III of this notice. Other activities related to restoration, such as feasibility studies, technical support projects, and monitoring (see sections 2 and 3), will be considered in the following months and will be presented to the public for review and comment. The Trustees also expect to publish a revised 1991 Restoration Work Plan in the *Federal Register* in Spring 1991. The Trustees also expect subsequently to publish notice of and to solicit public comment on detailed descriptions for each of the restoration projects selected for implementation in 1991.

#### Organization of this Notice

This notice has three main sections: I. Introduction, II. Restoration Planning, and III. Draft 1991 Restoration Work Plan. The Introduction presents a synopsis of the purpose of this notice and background information. Section II, Restoration Planning, describes the overall approach to restoration and reports on the planning activities conducted in 1990. In Section III, this notice provides information on restoration planning and initial implementation actions under consideration for 1991.

#### Further Information

Further information about the *Exxon Valdez* oil spill, the damage assessment studies, and restoration planning activities is contained in the documents referenced at the end of this notice and in the *Federal Register* published on November 19, 1990 (55 FR 48160). These documents and other information on restoration and damage assessment are available from the Oil Spill Public Information Center, 645 G Street, Anchorage, Alaska 99501.

## II. Restoration Planning

### A. The Planning Process

The Trustees' and EPA's restoration planning activities are designed to determine appropriate ways to restore natural resources and services injured by the *Exxon Valdez* oil spill. Restoration builds upon the spill response and damage assessment process by planning for, and then implementing, activities to restore the environment to its baseline condition.

The Natural Resource Damage Assessment (NRDA) regulations [43 CFR part 11], which implement certain provisions of CERCLA and CWA, define "restoration" or "rehabilitation" as " \* \* \* actions undertaken [in addition



to response actions], to return an injured resource to its baseline condition as measured in terms of the injured resource's physical, chemical, or biological properties or the services it previously provided \* \* \*. This definition of restoration from the NRDA regulations is provided here for informational purposes. The NRDA regulations are not mandatory but do provide a model for restoration planning.

The Trustees have determined that restoration after the *Exxon Valdez* oil spill should be subject to continuing review as information is developed about injuries and possible restoration opportunities. The Trustees expect that each year's work will build on the last, and that all information pertinent to the *Exxon Valdez* oil spill will be examined in the course of the restoration process.

#### 1. Steps in the Planning Process

The restoration planning process is a dynamic and evolving process that will generally include the following steps:

a. *Determining the Need for Restoration.* The need for restoration depends on the nature and extent of natural resources injured, lost, or destroyed and the adequacy of natural recovery. The primary information sources regarding resource injury, loss, or destruction are the studies conducted by State and Federal agencies as part of the natural resources damage assessment. These studies are described in the 1989 and 1990 *Exxon Valdez* damage assessment plans (see the documents referenced at the end of this notice). Other sources of information include public comments, data gathered as part of the oil spill response, and other studies conducted by government agencies outside of the damage assessment process.

b. *Identifying Potential Restoration Activities.* For any injury, there are three possible types of restoration which may be used singularly or in any combination:

*Direct restoration* refers to measures in addition to response actions, usually taken on site, to directly restore or rehabilitate an injured, lost, or destroyed resource or otherwise to promote or enhance the recovery of such resources;

*Replacement* refers to substituting one resource for an injured, lost, or destroyed resource of the same or similar type; and

*Acquisition of equivalent resources* means to compensate for an injured, lost, or destroyed resource by substituting another resource that provides the same or substantially similar services as the injured resource.

Determining the adequacy of natural recovery is fundamental to the choice of a restoration activity. In some cases the Trustees may determine that it is most appropriate to allow natural recovery to proceed without further intervention by man (i.e., no action alternative). The definition of direct restoration includes any administrative actions that may be taken by the Federal or State agencies, such as limiting certain activities in the affected areas, to promote recovery of injured resources.

c. *Evaluating Potential Restoration Alternatives.* Evaluation of potential restoration alternatives will consider such factors as:

- Nature and extent of injury;
- Adequacy of natural recovery;
- Technical feasibility;
- Net environmental benefit (including indirect impacts);
- Cost effectiveness;
- Reasonableness of cost of the restoration project in light of the value or ecological significance of the resource; and
- Results of actual or planned response actions.

Some restoration proposals may be readily evaluated. In other cases additional information, for example, biological, ecological, or resource assessment data, will be gathered to support the evaluation process. The goal of the Trustees and EPA is to conduct restoration planning for the recovery of the injured environment as a whole. In general, priority will be given to alternatives which benefit multiple rather than single species or resources. By necessity, however, individual elements of the restoration program may be species- or resource-specific.

d. *Recommending and Implementing Restoration Activities on a Continuing Basis.* As information about injuries, resources recovery, restoration methods or costs becomes available, certain activities may be recommended and carried out in advance of the receipt of funds for restoration from the parties responsible for the oil spill (see Section III, below).

e. *Presenting a Damage Claim to Parties Responsible for the Oil Spill and Receiving Funds for Restoration.* The damage assessment process initiated by the Trustees is designed to identify and quantify specific resource injuries and determine restoration costs and other corresponding monetary values. The Federal and State governments will present their claims for these amounts to the parties responsible for the oil spill as required by Federal and State law.

f. *Preparing and Implementing a Final Restoration Plan.* When the full amount

of restoration funds that will be recovered has been resolved, final determinations will be made concerning the nature and scope of the remaining phases of restoration.

g. *Evaluating the Effectiveness of Restoration Measures, and Recommending Additional Actions.* Implementation of restoration activities and the success of resource recovery will be monitored and evaluated based on standards appropriate to individual projects and resources to verify that restoration goals have been met. Long-term monitoring activities also may be implemented to verify that the affected area is recovering.

Restoration planning, as outlined above, is underway; the overall pace of restoration is dependent on the availability of information to determine injury and the resolution of a claim for damages. Implementation of restoration and monitoring activities may take a number of years. The Trustees and EPA intend to follow the restoration planning process as outlined above in order to accelerate the restoration of the Prince William Sound-Gulf of Alaska ecosystem and the affected natural resources and services.

#### 2. Public Participation

The Trustees and EPA intend to encourage, provide for, and be responsive to public participation and review during the restoration planning process. Carrying out this intent, however, is complicated by the need for confidentiality with respect to damage assessment information due to pending or possible future litigation with the parties responsible for the *Exxon Valdez* oil spill. Notwithstanding these considerations, the Trustees intend to provide an opportunity for meaningful public review and comment on all restoration implementation activities.

In September of 1990, the Oil Spill Public Information Center was opened in Anchorage to provide the public with scientific data and other information related to the 1989 *Exxon Valdez* oil spill. The Trustees will continue to place information in the center as it becomes available.

#### 3. Restoration Planning Activities in 1990

The Trustees and EPA began to solicit public opinion in March 1990 with a symposium on restoration in Anchorage, Alaska. In April and May of 1990, eight public scoping meetings were held throughout southcentral Alaska to ascertain the public's priorities for the restoration program. For a detailed description of these meetings, see the



documents referenced at the end of this notice. In addition to these public meetings, the governments have communicated individually with such constituencies as Native corporations and villages, fishing groups, and environmental organizations.

To gather specific scientific input for the restoration planning process, technical workshops were held in Anchorage in April 1990. Follow-up meetings were held in October and November 1990. Participants included members of the Restoration Planning Work Group (the Alaska Departments of Fish and Game, Environmental Conservation, and Natural Resources, and the U.S. Departments of Interior and Agriculture, the National Oceanic and Atmospheric Administration, and the U.S. Environmental Protection Agency) Federal and State resource managers, and scientists and technical experts under contract to the governments. Due to the necessary discussion of litigation-sensitive damage assessment information, these workshops were closed to the general public.

The Restoration Planning Work Group completed a preliminary literature search, which identified articles and other published material concerning techniques for ecological restoration following oil spills. Approximately 200 publications were acquired for detailed review and are listed in the August 1990 Progress Report.

The Trustees and EPA initiated several small-scale field studies to evaluate the feasibility of restoration techniques. Results from these studies will help determine the costs and effectiveness of full-scale restoration projects. Several technical support studies were also initiated to provide information needed to evaluate or carry out some potential restoration activities. These studies are described in the "State/Federal Natural Resources Damage Assessment and Restoration Plan for the Exxon Valdez Oil Spill," August 1990. The 1990 studies and preliminary results are summarized below.

#### B. 1990 Restoration Feasibility Studies

##### 1. Reestablishment of *Fucus* in Rocky Intertidal Ecosystems

Agencies: U.S. Environmental Protection Agency, U.S. Forest Service.

Early observations indicated that *Fucus*, a marine plant (rockweed) found on rocky shorelines in the intertidal zone throughout the oil spill area, was extensively damaged by both the spilled oil and cleanup efforts. If the natural recovery of *Fucus* could be significantly accelerated or enhanced it would

benefit the recovery of associated flora and fauna on intertidal rocky shores.

Specific objectives of this study were to identify the causes of variation in *Fucus* recovery at and near Herring Bay, Knight Island in Prince William Sound; to document the effects of alternative cleaning methods on *Fucus*; and to test the feasibility of enhancing the reestablishment of *Fucus*. Although results are preliminary at this time, it appears that *Fucus* recovers most slowly at the sites that were intensively cleaned and that almost no recovery occurs where tar cover persists.

##### 2. Reestablishment of Critical Fauna in Rocky Intertidal Ecosystems

Agencies: U.S. Forest Service, U.S. Environmental Protection Agency.

This feasibility study was designed to compare the rates of faunal recovery in rocky intertidal communities, and to demonstrate the feasibility of restoration of these communities by enhancing recolonization rates for such key species as limpets and starfish. Recolonization rates for these organisms and for the rockweed, *Fucus*, may limit the natural rates of recovery for the entire community.

Parameters examined included the presence or absence of common intertidal species on impacted and reference sites, population dynamics of several species of invertebrates, larval settlement on oiled versus non-oiled surfaces, and differences in algal grazing by limpets between oiled and referenced sites. Preliminary results indicate that heavy predation of several species of transplanted invertebrates was probably due to the lack of cover usually provided by *Fucus*.

##### 3. Identification of Potential Sites for Stabilization and Restoration With Beach Wildrye

Lead Agency: Alaska Department of Natural Resources, United States Forest Service.

This study was designed to identify sites at which damage to beach wildrye grass has occurred and to recommend restoration measures. This species was affected by both spilled oil and subsequent cleanup activities. Beach wildrye grass is important in the prevention of erosion in the coastal environment and is a key component of supratidal habitats in locations throughout the oil spill area. Erosion resulting from loss of beach wildrye can lead to the destabilization and degradation of wildlife habitats and of cultural and recreational sites. Survey work in 1990 in Prince William Sound indicated injury to several beach rye communities. Following confirmation in the 1991 spring shoreline assessment,

restoration activities can be initiated (see Restoration Project 1 summary).

##### 4. Identification of Upland Habitats Used by Wildlife Affected by the Oil Spill

Agencies: U.S. Fish and Wildlife Service, Alaska Department of Fish and Game.

A diversity of birds, mammals, and other animals were killed by the spill or injured by contamination of prey and habitats. Many of these species are dependent on aquatic or intertidal habitats for activities such as feeding and resting, but many also use upland habitats. Protection of upland habitats from further degradation may reduce cumulative effects on injured fish and wildlife populations, and thereby help them recover from the effects of the oil spill. This study focused specifically on marbled murrelets and harlequin ducks, two species known to have been affected by the spill and known to use upland habitats.

Based on surveys of 140 streams, preliminary results of the harlequin duck study indicate that this species nests along larger-than-average anadromous fish streams, with moderate gradients and clear waters. Preliminary results on murrelets suggest that murrelets use slopes facing north or west, and inland areas at the heads of bays as opposed to the outer peninsulas. Open bog meadows, especially at the heads of bays, appear to be used as flight corridors to upper wooded areas.

##### 5. Land Status, Uses, and Management Plans in Relation to Natural Resources and Services

Agencies: Alaska Department of Natural Resources, U.S. Forest Service, U.S. National Park Service, Alaska Department of Fish and Game.

The objective of this study is to locate, categorize, evaluate, and determine the availability of maps, management plans, and other resource documents relevant to restoration planning throughout the oil-spill region. Resource materials identified will assist in planning for and implementing site-specific restoration activities, including direct restoration, replacement, and the acquisition of equivalent resources.

To date, a variety of documents, maps, and management plans have been identified and are being evaluated; other resource materials are being located. This preliminary project will be completed in Spring 1991. A second phase, directly supporting the proposed Restoration Project Number 4, Protection of Strategic Fish and Wildlife



Habitats and Recreation Sites, is under consideration.

### C. 1990 Technical Support Projects

#### 1. Peer Reviewer Process for Restoration Feasibility Studies

Agencies: Alaska Department of Fish and Game, Alaska Department of Environmental Conservation, Alaska Department of Natural Resources, U.S. Department of the Interior, U.S. Department of Agriculture, National Oceanic and Atmospheric Administration, U.S. Environmental Protection Agency.

This project provided funds to ensure that scientists with expertise on natural resource restoration were available to provide peer review of restoration feasibility projects and other restoration planning studies and activities.

#### 2. Assessment of Beach Segment Survey Data

Agencies: Alaska Department of Natural Resources, Alaska Department of Environmental Conservation, Alaska Department of Fish and Game, U.S. Forest Service, U.S. Park Service, U.S. Environmental Protection Agency.

The objective of this project is to review and summarize beach survey information (obtained through oil spill response activities) to assist in planning for and implementing site-specific restoration activities, particularly in the area of direct restoration. This study was initiated late in 1990 and continues to date.

A master database is being created from that portion of the beach surveys relevant to restoration. The primary sources of this information are the Alaska Departments of Natural Resources and Environmental Conservation. Data from local and regional governments as well as non-governmental sources will also be reviewed and integrated into the system as appropriate. This preliminary project will be completed in Spring 1991.

3. Development of Potential Feasibility Studies for 1991 Agencies: Alaska Department of Fish and Game, U.S. Environmental Protection Agency, Alaska Department of Natural Resources, Alaska Department of Environmental Conservation, U.S. Forest Service, U.S. Department of Fish and Game, U.S. National Park Service, U.S. National Oceanic and Atmospheric Administration.

This project provided for the orderly development of additional feasibility studies including: (a) Monitoring "natural" recoveries; (b) pink salmon stock identification; (c) herring stock identification/spawning site inventory;

(d) artificial reefs for fish and shellfish; (e) alternative recreation sites and facilities; (f) historic sites and artifacts; and (g) availability of forage fish. Currently feasibility study proposals are under consideration for all of the above themes.

### III. 1991 Restoration Work Plan

The Trustees are currently developing and evaluating restoration planning and implementation activities, which will be described in the 1991 Restoration Work Plan to be published in the *Federal Register* later in the Spring. Planning activities will include feasibility studies, technical support studies, and natural recovery monitoring which will be made available to the public for review and comment. Implementation activities that are now under consideration are presented in this section. The Trustees and EPA are asking, through this notice, for public comment on and additional suggestions for restoration planning and implementation activities for 1991. As noted previously, the Trustees and EPA anticipate publishing later this Spring a notice of the restoration projects identified for implementation in 1991. More detailed descriptions for 1991 restoration projects will be made available to the public for comment.

#### A. 1991 Restoration Planning Activities

The fundamental purpose of restoration planning is to identify and evaluate potential restoration implementation activities, in consultation with technical experts and the public. The integration of results from the damage assessment and other information into restoration planning is critical to the success of the oil spill program. As damage assessment results are reviewed and evaluated, the Trustees will identify potential restoration implementation activities and related feasibility and technical support projects. This process involves ongoing consultation with principal investigators for damage assessment studies, agency experts, and outside peer reviewers to review the nature and extent of oil spill injuries in relation to the biology and ecology of injured species, habitats, and ecosystems. A key goal is to identify life history requirements, limiting factors, and environmental processes that are especially sensitive or that may be enhanced.

Section II describes five feasibility studies carried out in 1990, some of which may continue in 1991. The Trustees and EPA are considering additional feasibility and technical support projects in 1991 and, following additional review, intend to discuss

them in the Spring 1991 *Federal Register* Notice. Studies now being considered concern a variety of resources, including pink salmon, tidal marshes, Pacific herring, bald eagles, recreation, and sea otters. Feasibility and technical support studies will be implemented as damage assessment data and funding become available.

The scientific literature and experience from oil spills other than the *Exxon Valdez* will provide background on restoration and information from other oil spills. In 1991, the Restoration Planning Work Group expects to review and evaluate previously identified literature on restoration (see Appendix B, August 1990 Progress Report) and to continue review and evaluation of literature on species and ecosystem recoveries following anthropogenic and natural environmental disturbances.

Information on the adequacy of natural recovery is central to determining whether to implement restoration actions or to allow injured resources to recover on their own. Direct measures of recovery, such as species distribution, abundance, diversity, growth, reproductive success, or other physiological and biochemical properties, may be appropriate monitoring objectives. In some cases, it is appropriate to indirectly determine the degree of recovery by measuring exposure (presence of oil residuals and/or metabolites) and by applying knowledge or toxicological effects derived from the oil spill literature. For these reasons, the recovery of injured resources can best be followed by implementing a balanced program of monitoring. The duration of recovery monitoring will depend on the time necessary to establish a trend for recovery, and this in turn will necessarily depend on the severity and duration of effects resulting from the oil spill.

Some recovery monitoring studies will be considered for implementation in 1991. As with feasibility and technical support projects, these will be discussed in the March 1991 *Federal Register* document.

Public participation will continue to be an important component of restoration planning in 1991. The Restoration Planning Work Group is interested in and will try to accommodate requests for meetings with individuals or groups. In addition, the Trustees will consider whether and what additional actions, such as publications and workshops, are appropriate and possible in 1991. Requests and suggestions from the public are invited.



### B. 1991 Restoration Implementation Activities

Where the nature of the resource injury is reasonably clear, it may be desirable to begin restoration prior to receipt of funds from the parties responsible for the oil spill. There are several reasons why this may be so.

Failure to undertake timely restoration may allow damages initiated by the spill to continue or accelerate, as in the case of the loss of stabilizing vegetation on beaches. In other cases, protection of strategic habitats, subject to land-use changes, can reduce cumulative stresses on injured resources and maintain, in the near term, a full range of restoration options. Finally, the importance of a resource for subsistence, commercial, or recreational purposes may justify prompt restoration action.

The restoration activities being considered by the Trustees for implementation in 1991 are described below. Before making final decisions for the 1991 program, the Trustees are prepared to conduct public meetings in some of the oil spill communities, if requested to do so. Moreover, the Trustees expect to provide further opportunity for public comment on the 1991 restoration projects after detailed descriptions for each project are available. The projects now under consideration for the initial phase of the restoration process are:

#### 1. Restoration of the Beach Wildrye Community

Lead Agencies: Alaska Department of Environmental Conservation, U.S. Forest Service  
Need and Objectives:

The high intertidal-supratidal beach wildrye grasses (*Elymus arenarius* and *E. mollis*) communities show signs of localized injury as a result of the Exxon Valdez oil spill and the associated cleanup activities. Injury appears to have resulted from oiling and the stress of mechanical abrasion resulting from oil removal operations carried out by cleanup workers and equipment. Beach wildrye grasses are major contributors to natural beach stability. Injury to this important plant community may result in accelerated erosion of the beaches and adjacent upland plant communities. Also at risk from increased erosion are several nearshore archaeological sites.

Once the beach wildrye root masses are disturbed, natural recovery may be slow, taking several years. Wildrye recolonizes primarily by spreading outward from undamaged plants, and this process can be stopped altogether if the rate of erosion is too great. This may result in a significant loss of intertidal

and supratidal area. Restoration intervention may often stabilize a beach in one growing season.

The objective of this project is to stabilize injured sites where natural or cultural resources are at risk. Specific sites for restoration will be chosen following the 1991 Spring Shoreline Assessment. The Department of Environmental Conservation and the Forest Service are also exploring whether this project may more appropriately be carried out under the State/Federal response program.

#### Methods:

Replanting beach wildrye for stabilization is a proven technology. Nearby healthy stocks of beach wildrye grass will be used as a source of donor material. After replanting, fertilizer will be applied (20-20-10 fertilizer up to 800 pounds per acre) to help the transplanted beach wildrye grass recolonize. At some locations fertilizer alone may be sufficient to encourage existing injured plant communities to recover without transplanting new stock.

Estimated 1991 Cost: \$180,000

#### 2. Public Information and Education for Recovery and Protection of Alaska's Marine and Coastal Resources

Lead Agencies: U.S. Fish and Wildlife Service, U.S. National Park Service, Alaska, Department of Environmental Conservation  
Need and Objectives:

The Exxon Valdez oil spill caused direct and indirect injury to the marine birds and mammals of southcentral Alaska. The purpose of this project is to make users of the area aware of the changes to the ecosystem resulting from the oil spill and to lessen the potential for additional harmful human disturbances.

#### Methods:

The project's sponsors will publish and distribute information explaining the potential adverse impacts of human activities, and the importance of increased conservation and protection of marine birds and mammals in key habitats in the oil spill area. Print media such as posters, brochures, and possibly books and video tapes will be produced. Consideration will also be given to production of material for school curricula.

Print media will be distributed through traditional outlets including but not limited to refuge, park, and tourist information and visitor centers. Additional distribution will occur at airports, boat harbors, commercial tour operators, and to public agency and private industry training staffs.

Some species identification information will be included but the primary content of the media will emphasize strategies to allow public use and enjoyment of marine birds and mammals while preventing harmful disturbances to these species.  
Estimated 1991 Cost: \$100,000

#### 3. Salmonid Stocks and Habitat Restoration

Lead Agencies: Alaska Department of Fish and Game, U.S. Forest Service  
Need and Objectives:

Spawning and nursery areas of wild stocks of pink and chum salmon which were impacted by the Exxon Valdez oil spill occur throughout Prince William Sound, lower Cook Inlet, and the Gulf of Alaska. Pink and chum salmon are major components of the ecosystem, serving as important food sources for other fish, birds, terrestrial and marine mammals. Pink and chum salmon are also harvested by man in subsistence, commercial, and sport fisheries. Since salmon return to the individual streams in which they were born, with little straying to other streams, genetically unique wild salmon stocks will be restored through site specific rehabilitation of salmon spawning and rearing habitats.

#### Methods:

This project consists of several proven fisheries enhancement techniques that may be applied immediately at specific sites. In addition to those sites and streams at which potential rehabilitation activities already have been identified, a survey of affected salmon spawning habitat within the oil spill area will be conducted in 1991 to determine additional restoration measures. The proposed techniques include fish passage through stream channelization or fish ladders to overcome physical and hydrological barriers and construction of spawning channels. All of these measures provide oil-free spawning areas to replace oil-impacted spawning areas. Additional wild salmon stock restoration measures include remote egg-taking and incubation at existing hatcheries for ultimate fry release in oil-impacted streams. Other measures may include optimal fry release programs that will enhance marine survival of juvenile salmonids.

Estimated 1991 Cost: \$1,300,000

#### 4. Protection of Strategic Fish and Wildlife Habitats and Recreation Sites

Lead Agencies: Alaska Department of Fish and Game, Alaska Department of Natural Resources, U.S. Department of the Interior, U.S. Department of Agriculture



### Need and Objectives:

The marine and intertidal habitats where most oil spill injuries occurred are ecologically linked to adjacent uplands. The water quality in streams and estuaries where salmon spawn depends on the adjacent uplands. Eagles nest and roost in large trees along the coasts and streams, and marbled murrelets nest in association with forested uplands. Harlequin ducks nest in riparian habitats and feed in the streams as well as in nearby intertidal and estuarine areas. Common and thick-billed murre and other seabirds nest on off-shore islands.

Tourism and recreation activities, such as sport fishing and camping, also depend on the quality and accessibility of shorelines and uplands. The diversity, productivity, and uses of intertidal and estuarine habitats, and of freshwater streams along the coast depend on the ecological integrity of the adjacent uplands. Continued productivity in the undamaged parts of the regional ecosystem, including strategic marine, intertidal, and estuarine habitats and adjacent uplands, may be necessary for the recovery of biological communities that were injured.

During the public scoping process the governments received many restoration suggestions that involved the protection and prime fish and wildlife habitats, recreation sites, and adjacent uplands. Suggested approaches to this protection included land acquisition and changes in management practices.

Land-use activities may occur in the oil spill area in 1991 or 1992. These activities may impact important habitats and recreation sites or slow the recovery of spill-injured resources.

The objective of this project is to identify and protect strategic wildlife and fisheries habitats and recreation sites and to prevent further potential environmental damages to resources injured by the *Exxon Valdez* oil spill. This project will be preceded by a technical support project to identify and evaluate potential properties which if publicly owned will contribute to this objective. Where acquisition of property

rights is determined to be appropriate, they will be acquired on a willing buyer/willing seller basis. Primary considerations in deciding which properties should be acquired during this project will include (1) the nature and immediacy of changes in use that may further affect resources injured by the oil spill and (2) the prospect that failure to act will foreclose restoration opportunities.

The Trustees have developed the following preliminary sequence of steps for use in identifying and protecting strategic fish and wildlife habitats and recreation sites:

1. Identification of key upland habitats that are linked to the recovery of injured resources or services by scientific data or other relevant information.
2. Characterization and evaluation of potential impacts from changed land use in relation to their effects on recovery of the ecosystem and its components; comparative evaluation of recovery strategies not involving acquisition of property rights (e.g., redesignation of land use classification), including an assessment of protection afforded by existing law, regulations, and other alternatives.
3. Evaluation of cost-effective strategies to achieve restoration objectives for key upland habitats, identified through steps one and two above. This would include evaluation of other restoration alternatives for these resource injuries.
4. Willing seller/buyer negotiations with private landowners for property rights.
5. Incorporation of acquired property rights into public management.

Habitat and recreation site acquisition proposals that meet the appropriate evaluation factors for restoration (see section 2) will be identified and assigned by priority for implementation in accordance with this preliminary five-step process and applicable State and Federal laws and regulations.

The geographic scope of the 1991 project will be the oil spill area. Subsequent to this initial effort, the

Trustees will continue to survey potential acquisitions, including acquisitions outside the spill area. Estimated Cost: To be determined

### C. Funding for the 1991 Restoration Work Plan

Although it is expected that the responsible parties will pay for the costs of the damage assessment and restoration program, there is no certainty about the final amount and when such funds will be forthcoming. It is possible, therefore, that funds to carry out the 1991 Restoration Work Plan, including the proposed planning and implementation activities, will have to be advanced by the State and Federal governments. To date, those funds have not been committed or secured by either government.

### D. References

The documents listed below provide additional information on damage assessment and restoration. They are available from the Oil Spill Public Information Center, The Simpson Building, 645 G Street, Anchorage, Alaska, 99501.

1. "The 1990 State/Federal Natural Resource Damage Assessment and Restoration Plan for the *Exxon Valdez* Oil Spill, Volume I Assessment and Restoration Plan Appendices A, B, C."
2. "State/Federal Natural Resource Damage Assessment Plan for the *Exxon Valdez* Oil Spill," August 1989.
3. "Restoration Planning following the *Exxon Valdez* Oil Spill: August 1990 Progress Report."
4. "Restoration following the *Exxon Valdez* Oil Spill: Proceedings of the Public Symposium," July 1990.

Dated: February 26, 1991.

**LaJuana S. Wilcher,**  
Assistant Administrator, Office of Water, U.S.  
Environmental Protection Agency.

Dated: February 25, 1991.

**Charles E. Cole,**  
Attorney General, State of Alaska.

[FR Doc. 91-5014 Filed 2-28-91; 8:45 am]

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Federal Register

Vol. 56, No. 41

Friday, March 1, 1991

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## FEDERAL REGISTER PAGES AND DATES, MARCH

8681-8904.....1

## CFR PARTS AFFECTED DURING MARCH

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## LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List February 21, 1991



## TABLE OF EFFECTIVE DATES AND TIME PERIODS—MARCH 1991

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these

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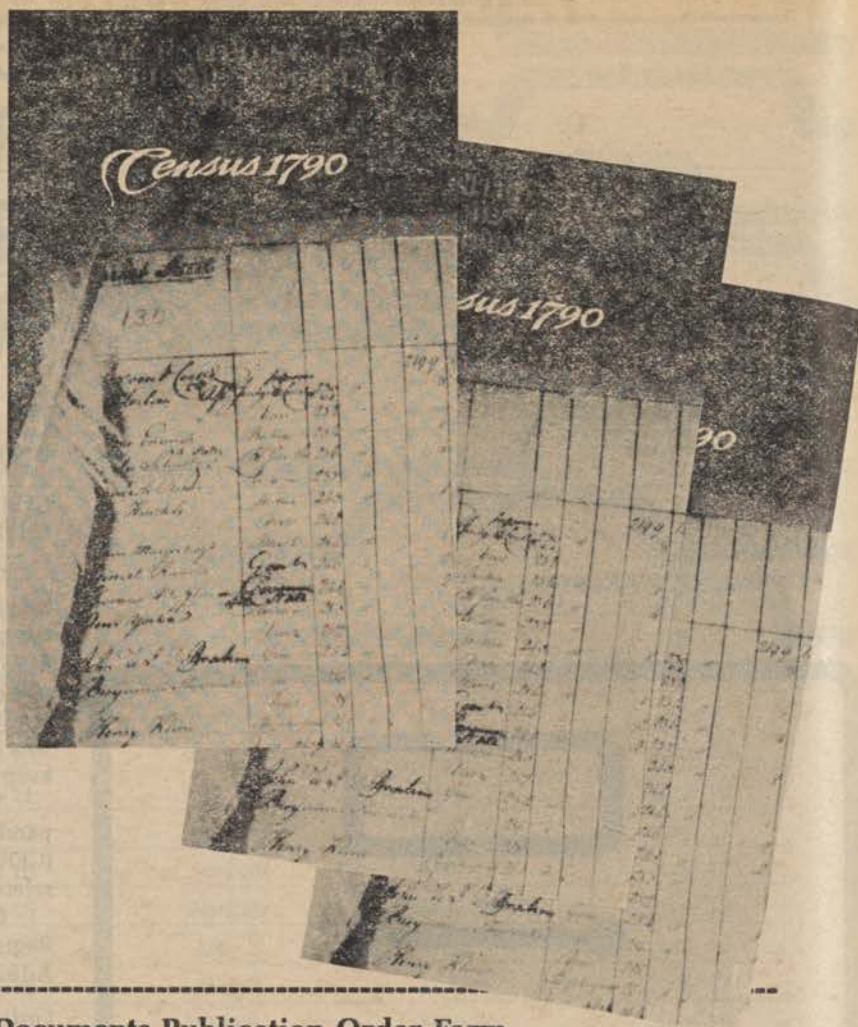
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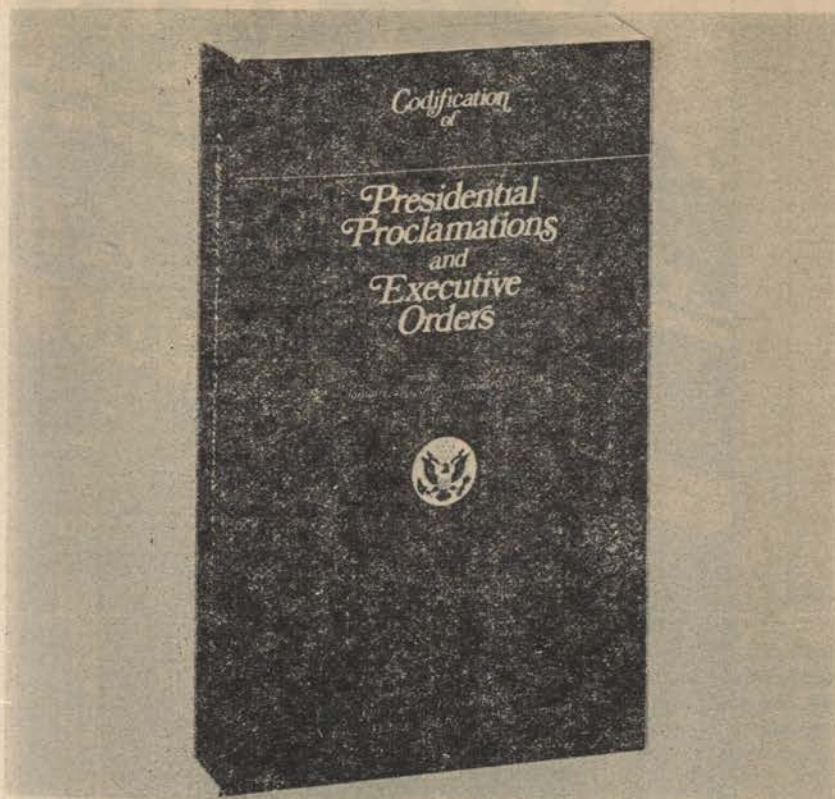
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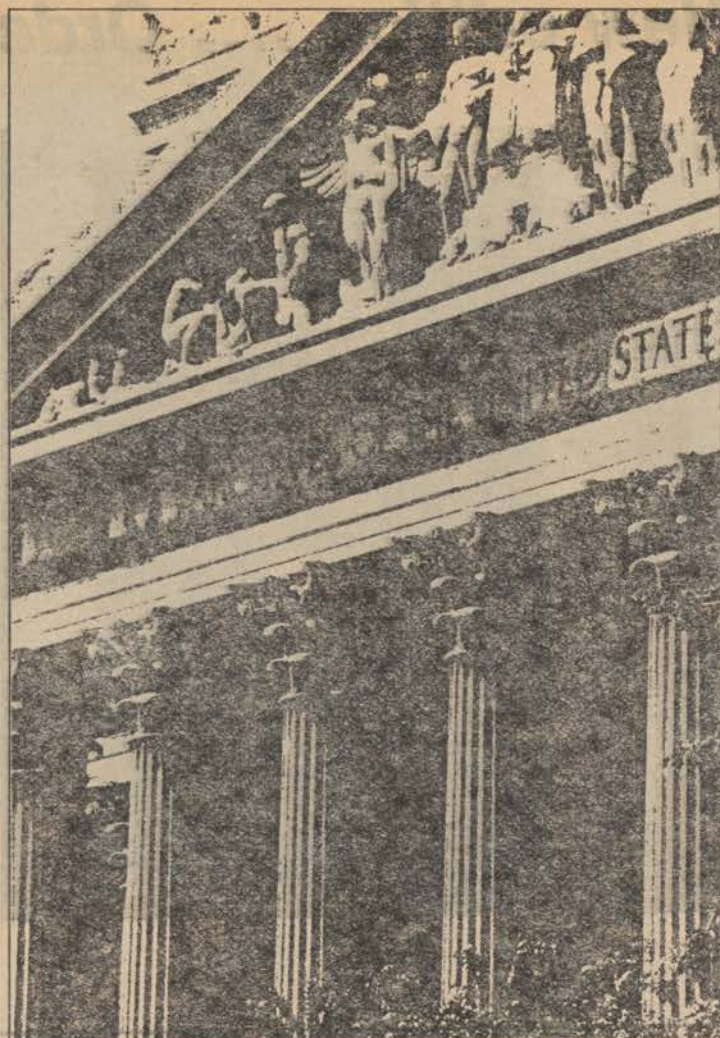
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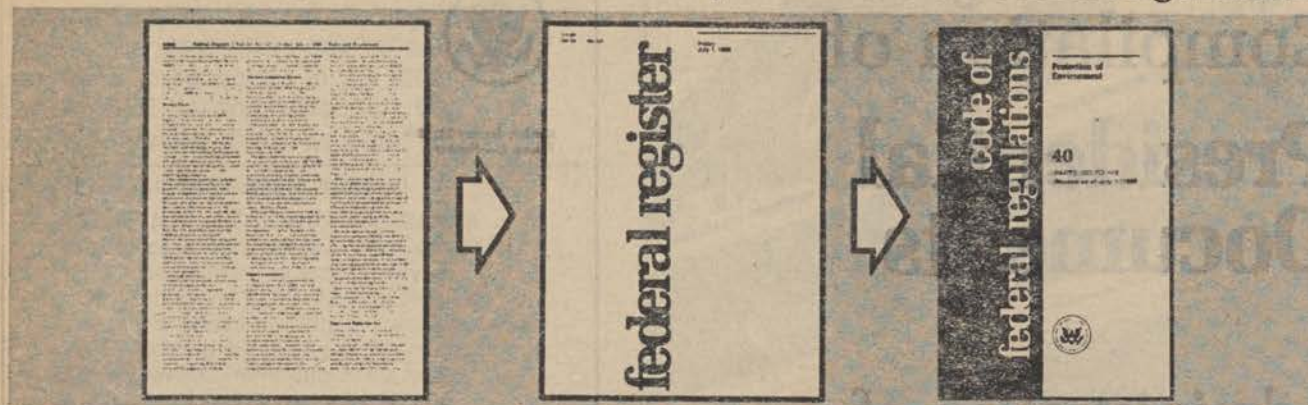
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